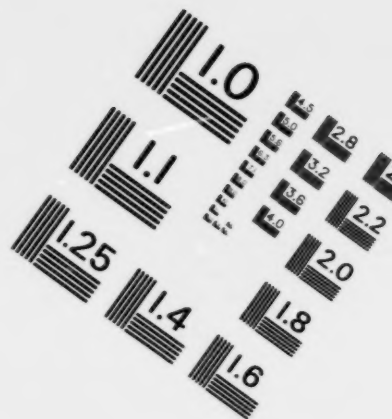
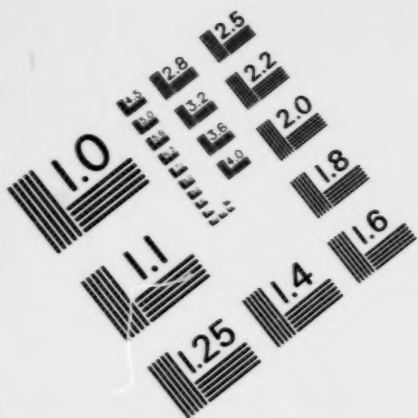


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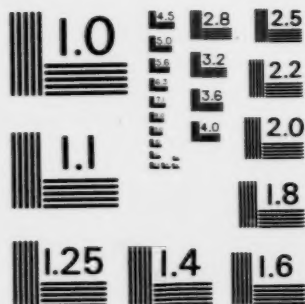
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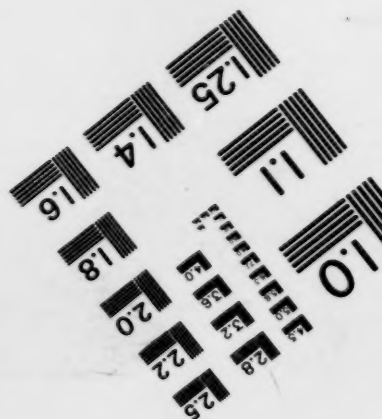
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International Labour Conference
85th Session 1997

Report IV (2)

**Revision of the Fee-Charging
Employment Agencies Convention
(Revised), 1949 (No. 96)**



International Labour Office Geneva

International Labour Conference

85th Session 1997

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**Revision of the Fee-Charging
Employment Agencies Convention
(Revised), 1949 (No. 96)**

Fourth item on the agenda

International Labour Office Geneva

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INTRODUCTION

At its 262nd Session (March-April 1995), the Governing Body of the International Labour Office decided to place on the agenda of the 85th Session (1997) of the International Labour Conference, the item concerning the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). However, proposals concerning the content of an instrument or instruments to revise Convention No. 96 would have to be based on a comprehensive study and report on law and practice in member States.

At its following session, the Governing Body determined that the issue would be dealt with by the Conference according to the single-discussion procedure set out in article 38 of the Standing Orders of the Conference. In accordance with the provisions of this article, the Office drew up a preliminary report¹ intended to serve as the basis for the discussion of this question. This report gave an overview of the situation, analysed the law and practice in various countries and contained a questionnaire. It was communicated to the governments of the member States of the ILO, which were invited to send their replies so as to reach the Office not later than 30 June 1996. Given that only a few replies (23) were received within the deadline, the Office sent a reminder to the governments of the member States who had not yet replied to the questionnaire, asking them to do so before 15 August 1996 at the latest.

At the time of drawing up this report, the Office had received replies from the governments of the following 73 member States:² Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, United Kingdom, United States, Uruguay and Zimbabwe.

The attention of governments was drawn to article 38, paragraph 1, of the Standing Orders of the Conference, in which they are requested "to consult the most representative organizations of employers and workers before finalizing their

¹ ILO: *Revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)*, International Labour Conference, 85th Session, Geneva, 1997, Report IV(1).

² To be able to send this report to the member States in December 1996, only those replies registered at the ILO before 23 August 1996 have been taken into account. Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

replies"; they were also asked to indicate which organizations had been so consulted.

The governments of the following member States pointed out that the employers' or workers' organizations had been consulted or involved in the drafting of the reply: Argentina, Australia, Austria, Bahamas, Belgium, Brazil, Bulgaria, Canada, Cape Verde, Chad, China, Colombia, Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Honduras, Hungary, Italy, Japan, Jordan, Kuwait, Lebanon, Lithuania, Mauritius, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States and Uruguay.

The governments of the following member States included in their replies the opinions of employers' or workers' organizations: Canada, Czech Republic, Estonia, Finland, Netherlands, Norway, Peru, Poland, Portugal, Singapore and Sweden.

The governments of the following member States sent separately the replies from employers' or workers' organizations; and in some cases these replies were received directly at the Office: Argentina, Australia, Austria, Belgium, Brazil, Canada, Côte d'Ivoire, Cyprus, Denmark, France, Germany, Italy, Japan, Jordan, Netherlands, New Zealand, Norway, Poland, Portugal, South Africa, Spain, Switzerland, Turkey, United Kingdom, United States and Uruguay.

This report has been prepared on the basis of the replies received, the substance of which, together with brief commentaries,³ is given in the following pages. It also contains the text of a draft Convention and a draft Recommendation drawn up on the basis of these replies, in accordance with article 38, paragraph 2, of the Standing Orders of the Conference. It will be up to the Conference to make a final decision on the subject at its next session.

³ In view of the restrictions on the length of the report (51,000 words), priority has been given to reproducing the replies received – although these have had to be considerably shortened.

REPLIES RECEIVED AND COMMENTARIES

This section contains the substance of the replies to the questionnaire in the preliminary report (Report IV(1)).

A summary is first made of the general observations submitted by the governments and their replies to the questionnaire, as well as of replies received from the employers' and workers' organizations.

After examining the general observations, each question is reproduced and followed by a list indicating the governments that replied to it, grouped in accordance with the nature of the replies (affirmative, negative or other). Where a government submitted observations qualifying or explaining its reply, and where observations have been received from employers' and workers' organizations, the substance of each observation is given, in alphabetical order of countries, after the above-mentioned list. Observations that are the equivalent of a simple affirmative or negative reply are not reproduced unless they are replies of workers' or employers' organizations which differ from the replies of their respective governments. Where a reply deals with several questions together, the substance of the reply is given under only one of these questions.

Some governments gave information on their national law and practice in their replies. While this is most useful for the work of the Office, this information has not been reproduced unless it is essential to an understanding of the reply.

The summary of the replies is followed by a brief Office commentary referring to the corresponding article(s) or paragraph(s) of the proposed texts at the end of this report.

General observations

Argentina. General Confederation of Labour (CGT): The provision of work to unemployed persons should not be carried out on a profit basis — and it is the function of the State to prevent this. The CGT is in favour of a monopoly because in this way all job offers would be directed to a single public institution which would guarantee equal opportunity of access to vacancies.

Austria. Federal Chamber of Labour (BAK): Austria draws a precise distinction between labour placement and the hiring out of labour. The ILO deals with these two aspects in terms of the functioning of labour markets, without looking more closely at the contractual relations and legal consequences applicable in each case.

Belgium. The Government feels that the major concern which should govern the revision of Convention No. 96 should be the strengthening of the complementarity between public and private activities, as the principle of the universal nature of services provided in labour market services must be guaranteed. The Federal Government and the regional Brussels, Flemish and Wallon governments are of the opinion that activities related to labour market administration should first and foremost be a matter for the public service.

Additional contribution specific to the Wallon Region, transmitted by the Federal Government (Wallon Region): The proposed approach would seem to be to include only

provisions in the Convention which are often minimal and to concentrate more in-depth, full and detailed provisions in the Recommendation; this is regrettable.

Canada. Canadian Employers' Council (CEC): The CEC considers the proposed revision of Convention No. 96 as unworkable under the terms of reference in this report and urges that all parties consider the complexities of the changing labour market.

Cape Verde. The Government has no observations to make, since there are no employment agencies (whether fee-charging or non-fee-charging) in Cape Verde; consequently there is no legislation providing for the establishment of these services.

Chad. As the ILO noted in its report, fee-paying employment agencies do not exist in Chad and Conventions Nos. 34 and 96 on the subject have not been ratified.

Côte d'Ivoire. General Union of Workers of Côte d'Ivoire (UGTCI): The envisaged single-discussion procedure is inadequate to create international instruments which take into account the interests of governments and workers who still have no experience whatsoever in the area of placement through intermediaries which set themselves up as actual employers and undermine work protection.

Denmark. There are no statutory rules in Denmark requiring private temporary work agencies and other placement agencies to have a public licence or approval to operate; neither are there any rules concerning payment for their services. Their activities are subject to the same general legislation on sound business practices.

France. National Council of French Employers (CNPf): The CNPF feels that the revision of the Convention, which must move towards a greater liberalization of the labour market, should better meet the aspirations of the actors on the labour market. Indeed, the world of work requires greater flexibility to match supply and demand. However, the new Convention should not result in a widening of the gap between private employment agencies and public employment services. In addition to these general comments, the CNPF has included specific replies from the International Confederation of Temporary Work Businesses (CIETT) to the questionnaire concerning the ILO's report on Convention No. 96.¹

French Democratic Confederation of Labour (CFDT): The Conference should only proceed with the revision of the Convention, in accordance with the mandate conferred upon it by the Conference in 1994; furthermore, it would be impossible also to draw up a Recommendation under the single-discussion procedure.

Germany. Confederation of German Employers' Associations (BDA): Private employment agencies make a substantial contribution to the improvement of the labour market balance. Any special regulation through international standards must be as broad and flexible as possible.

German Confederation of Trade Unions (DGB): The DGB does not believe that authorizing profit-making private employment agencies would make any significant contribution to solving labour market problems.

Italy. Under the Italian legal system, placement and the conditions determining the matching of the supply of and demand for labour are exclusive functions of the State. Draft legislation has been prepared to reform the entire subject of placement with a view to achieving a more effective matching of supply and demand. Italy supports the holding of an ILO tripartite meeting on this matter, but reserves the right to express its views on the proposed instruments.

General Confederation of Industry (CONFINDUSTRIA): Any revision of international instruments with a view to making the labour market more flexible would be supported by enterprises and would bring undoubted benefits to workers who are not integrated into the labour market.

Trade Union Association of Workers in Credit Enterprises (ASSICREDITO): The problems of private employment agencies should be set in the widest context of the flexibility and efficiency of the labour market. In this connection, there is a clear need to set aside — both

¹ The reply of the CIETT may be consulted by delegates at the Conference.

at the national level and at the European and international levels — the principle of the public monopoly of placement activities, which is no longer able to guarantee an effective matching of supply and demand.

Japan. Regarding private employment agencies, national circumstances vary in each member State which has its own legislation, customs and labour-management relations. While making it a basic principle that the revised Convention No. 96 should ensure that private employment agencies carry out proper services, with due attention being paid to the protection of workers and the effective adjustment of demand and supply of the labour force, the revised Convention should provide a broad framework which could be applied to each Member and provide for adequate flexibility.

Japan Federation of Employers' Associations (NIKKEIREN): Fee-charging employment services should, in principle, be open to the private sector, and the current restrictions on the types of occupations placement services may cover and on their fees should be abolished.

Japan Trade Union Confederation (JTUC-RENGO): The Confederation does not support the approach of the revision of ILO Convention No. 96 as indicated in the questionnaire. The current Convention (Part III) makes it a principle that employment services be carried out by public bodies, with private organizations acting in an auxiliary capacity. JTUC-RENGO believes that this principle should be maintained.

National Confederation of Trade Unions (ZENROREN): The revised Convention should not be adopted unless it is directed towards restricting the evil effects brought about by fee-charging employment agencies or worker dispatching agencies. For the same reasons, there should not be a Recommendation.

Lebanon. In Lebanon, the establishment of private employment agencies is banned. No licence will be granted for the setting up of employment offices or other offices carrying out functions incumbent upon the National Employment Board.

Netherlands. Joint reply from the Netherlands' Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV), and the Central Union for Intermediate and Higher Level Employees (MHP): There might be confusion about the respective scope and aims of the proposed revision and the Convention on contract labour under consideration. The legal status of the relationship between a temporary work agency (TWA) and the workers cannot be made to cover all situations without giving rise to substantial uncertainties. It being understood that the revised Fee-Charging Employment Agencies Convention should cover TWAs and the Contract Labour Convention should cover TWA workers, the Netherlands trade unions are aware that there will be an overlap between the two Conventions. This overlap should, however, be accepted.

New Zealand. The Government believes that Convention No. 96 is outdated and unnecessarily prescriptive in an area in which a special instrument is unnecessary. It does not therefore support the revision of a Convention which proposes to continue the specific regulation of this area. The three areas of activity, as specified in question 4 for private employment agencies, should be dealt with in the same way as similar activities of other groups and individuals, according to national practice.

Norway. The proposed Convention should set forth general guidelines on private employment agencies that could accommodate the widely divergent practices prevailing in different countries. Norway has ratified the existing Convention No. 96, Part II, and has at present no intention of reducing the dominant role of the public placement services. The Norwegian Government, however, accepts the main principles behind the ongoing revision of Convention No. 96.

Confederation of Norwegian Business and Industry (NHO): NHO considers fee-charging employment agencies as normal business companies. In principle therefore there is no need for regulations in addition to those that apply to ordinary companies.

Confederation of Trade Unions in Norway (LO): Norway should continue to use the existing Convention No. 96 as it is ratified today.

Panama. The Government feels that if the Convention were well structured, the Recommendation would be unnecessary.

South Africa. Business South Africa (BSA): The BSA welcomes the revision of Convention No. 96 on the grounds that it is outdated in view of the increasingly dynamic conditions of modern labour markets. International labour standards should be appropriate both in terms of promoting labour market flexibility in the context of world competitiveness and of protecting workers' interests in the context of the unique circumstances prevailing in each member State.

Sri Lanka. As there are no institutions implementing the legislation relevant to employment agencies recruiting for the local market, the Government's reply relates to agencies recruiting labour for foreign markets.

Sweden. The Swedish ILO Committee welcomes the prospect of Convention No. 96 being revised in 1997. Sweden denounced the Convention in 1992. The Committee believes that the Conference Committee report of 1994 (*Provisional Record*, No. 21) and the preliminary report will provide a good basis for framing a new Convention and, possibly, a Recommendation. The Ministry of Labour wishes to voice an objection to the reference to the collapse of the Swedish model/Swedish labour market policy on pages 20-21 of the preliminary report.

The Swedish Employers Confederation's representatives on the Swedish ILO Committee (SEC): Dissenting opinion. Unlike the majority of the Committee's members, the employers' representatives do not see any real need for a new Convention. They feel that employment agencies, like the hiring out of workers, are part of normal economic activity and should not therefore be regulated through any form of international instrument.

Switzerland. Swiss Confederation of Christian Trade Unions (CSG/CNG): The CSG/CNG supports the establishment of a new standard in view of the fact that the public monopoly of job placement no longer corresponds to the reality of today's labour market. None the less, the new standard should establish a framework which: (i) acknowledges the importance of efficient public employment services for jobseekers; (ii) provides adequate protection against abuse, particularly in certain developing countries but also in other countries with more developed labour markets.

Swiss Federation of Private Placement and Temporary Work Enterprises (SVUTA-FSETT): The Federation welcomes the fact that the Report IV (1) on Convention No. 96 reflects the new ILO approach which is more positive towards legislation on fee-charging employment agencies. A revision of Convention No. 96 is necessary because, despite the existing Convention of 1949, the TWAs — indeed job placement agencies in general — have undergone rapid developments and their role in new job creation is now potentially important.

Federation of Swiss Salaried Employees' Associations (vSA): The Federation supports a new version of the instrument which is more in line with the dynamics of labour markets and, at the same time, protects workers. The thorough revision of a Convention and an accompanying Recommendation at one sole session appears to be too ambitious a programme.

The vast majority of replies reiterated the views put forward and conclusions adopted at the 81st Session (1994) of the International Labour Conference concerning the role of private employment agencies in the functioning of labour markets. They were of the opinion that the present Convention was outdated and no longer reflected the reality of labour markets. It was also acknowledged that the situation was extremely complex and could give rise to considerable abuse. A number of governments and workers' organizations, as well as several employers' organizations, stressed the role of the public employment service which, they felt, was vital for a better functioning of the labour market as a whole.

The majority of replies stated a preference for a new framework which would be sufficiently flexible to allow for adjustments with the varying national legislations. The governments of countries with as yet fairly unstructured labour markets wanted the instrument(s) adopted to provide a clear basis for legislation concerning the

activities of fee-charging employment agencies and other private employment agencies. These countries, as well as many others, were particularly concerned about the agencies recruiting migrant workers.

I. Form of the international instrument(s)

Should the International Labour Conference adopt a Convention concerning the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)?

Qu. 1

Total number of replies: 68.

Affirmative: 63. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Norway, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 4. Bangladesh, Jordan, New Zealand, Syrian Arab Republic.

Other: 1. Chile.

Australia. It is necessary to revise an inappropriate Convention by another Convention. The Australian Government does not consider Convention No. 96 a suitable target for ratification as Australia does not support a monopoly of employment services by the public employment services (PES). Australia recognizes the role of private employment agencies (PREAs) in labour markets operating in the Australian context.

Austria. Association of Austrian Manufacturers (VÖI) and the Austrian Chamber of Commerce (WKÖ): Given that Austria has never ratified Convention No. 96 and that, for several years, acceptable regulations between countries have existed, the employers feel that an international instrument is unnecessary.

Belgium. The rapid and uncontrolled rise in the number of fee-paying recruitment and selection (or placement) agencies, as well as the increasingly frequent use of intermediary work agencies for very long periods, makes an adjustment of the existing regulations inevitable.

Wallon Region: Provided that the revision of Convention No. 96 is carried out together with the revision of the Employment Service Convention, 1948 (No. 88), and its accompanying Recommendation (No. 83).

Brazil. National Confederation of Commerce (CNC): The regulation of working conditions in specific situations, such as that of fee-charging employment agencies, should not be the subject of international standards. Private employment agencies should receive the same treatment as any other enterprise. However, if an instrument is adopted, the CNC would prefer a Recommendation, which would provide greater flexibility.

National Confederation of Industry (CNI) and National Confederation of Agriculture (CNA): Yes.

Canada. Given the changing nature of the labour market, and the increasing recourse to new types of private employment firms, it is important to have a modern Convention which would attempt to strike a new balance between the employment services — both public and private — and to ensure that private employment agencies contribute to the appropriate functioning of the labour market whilst safeguarding the rights of jobseekers and good industrial relations.

Chile. Possibly, in the light of the difficulties connected with the application of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), which prompted its revision by Convention No. 96.

Côte d'Ivoire. Convention No. 96 is outdated because, on the one hand, it underestimates the role of private employment agencies and, on the other hand, it does not guarantee an adequate protection of workers.

Denmark. The Danish Government welcomes a revision of Convention No. 96 which in many respects is outdated. The objective should be to adopt a Convention which is sufficiently flexible to cover the very big differences which exist among the countries in this field.

Finland. The proposed Convention should set forth general guidelines on private employment agencies and their fee-charging rights. As the Convention is peremptory by nature, it should be general enough to accommodate the widely divergent practices prevailing in different countries.

Jordan. Federation of Chambers of Commerce and Industry: Yes.

Mexico. There is currently a proliferation of fee-charging employment agencies. The way in which these enterprises work has become more diversified and the new labour market conditions are making it necessary to adjust standards to create closer links between labour supply and demand.

Netherlands. Federation of Netherlands Industry and Employers (VNO-NCW): A review of Convention No. 96 is highly desirable. The Federation does not see any specific need for a Recommendation, but remains open-minded to good arguments for it.

New Zealand. The approach New Zealand has taken has been to ensure that a free, public employment service is available and that general consumer protection is provided for people using the services of private employment agencies.

New Zealand Employers' Federation (NZEf): The NZEF is concerned that the tone of Chapter I of Report IV(1) indicates a continuing ILO view that labour market imperfections are best dealt with by means of government intervention.

New Zealand Council of Trade Unions (NZCTU): The NZCTU does not agree with the Government that the Convention should be revoked or cancelled. The conduct of employment agencies in New Zealand is heavily influenced by the size and role of the government-funded employment service (NZES). In the event of this service being disestablished or privatized, the whole logic of the Government's response would no longer apply.

Norway. LO: A revised Convention No. 96 must regulate the existence and operations of private employment agencies in a way that secures the rights of workers and jobseekers. To make this clear and straightforward this should be regulated in a Convention.

Poland. Solidarnosc (independent self-governing trade union): In the light of recent changes on the world capital market and their impact on labour markets, the revision is absolutely necessary for promoting equality in employment services and protecting vulnerable groups.

Singapore. While there are merits in having a revised Convention and Recommendation to govern private employment agencies, there is a need to ensure that such instruments are not inflexible and do not unduly restrict the activities of private employment agencies, as they do perform a useful economic function.

Sweden. Member States should have the same basic rules of conduct for the labour market. A new Convention is clearly needed.

Switzerland. The "monopolistic" position conferred upon the public employment service by the Convention in question (even revised) is incompatible with the system in Switzerland; furthermore, it no longer corresponds to the situation which has developed in most countries and makes it impossible to take into account all the actors likely to guarantee an optimal functioning of the labour market.

Syrian Arab Republic. The Government does not feel that there is any reason for the International Labour Conference to adopt a Convention revising Convention No. 96 on fee-charging employment agencies because the employment agencies in the Syrian Arab Republic are public and free and private employment agencies are banned.

Turkey. Confederation of Turkish Employers' Associations (TISK): Current changes in labour relations need to be reflected in ILO standards. In many countries, fee-charging employment agencies have not been established within the legal framework.

United Kingdom. The Government would support the adoption of a revised Convention — provided it is not a detailed and prescriptive instrument. The Convention should follow the spirit of the specific conclusions of the Committee on Private Employment Agencies at the 81st Session of the International Labour Conference in 1994.

Confederation of British Industry (CBI): The CBI would support the revision in such a way as to remove the concept of state monopoly in providing employment services.

Bermuda Industrial Union (BIU): The existing Convention need only be revised.

United States. Member States have already cited the existing Convention as outdated, not only because it fails to recognize the role of PREA but because it does not provide adequate protection against abuse.

United States Council for International Business (USCIB): Convention No. 96, which establishes a preference for public employment agencies over private agencies, is no longer compatible with the realities of current labour markets.

Zimbabwe. The abolition of private employment agencies is no longer realistic because the roles of the public employment service and private employment agencies are complementary.

The vast majority of replies were in favour of a new Convention. Consequently, a proposed text has been drafted; it is contained in the last part of this report (see "Proposed texts", section A).

Generally speaking, the governments stressed that the present Convention did not allow for a response to the dynamics of changing labour markets. They felt that the present instrument did not correspond with the actual role of private employment agencies and, furthermore, that it did not provide adequate protection against abuse. This last argument was taken up by many workers' organizations who pointed out that a better protection of workers and jobseekers was at the core of the discussions at the 81st Session (1994) of the International Labour Conference. A number of governments and several employers' organizations stated that although they were not opposed to a revision, they did not see the need for a Convention to regulate the activities of private employment agencies.

Qu. 2 *If so, should the International Labour Conference also adopt a Recommendation, supplementing the Convention revising Convention No. 96?*

Total number of replies: 67.

Affirmative: 59. Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Republic of Korea, Kuwait, Lebanon, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 7. Chile, Estonia, Germany, Lithuania, New Zealand, Panama, Spain.

Other: 1. Netherlands.

Argentina. Argentine Industrial Union (UIA): This will depend on the content of the revision. Many of the provisions included as part of the Convention in the questionnaire could be part of the Recommendation.

Brazil. CNC: Only a Recommendation.

CNI and CNA: No.

Chile. A Convention which addresses all of the subject's aspects may suffice.

Costa Rica. It would be relevant to adopt a Recommendation supplementing the Convention for its application, bearing in mind the specific characteristics of the member States.

Côte d'Ivoire. The Recommendation would be necessary to establish a structured and clear framework, whilst allowing for a certain flexibility to take account of national conditions.

Denmark. As the Government would like to see a very flexible Convention, it would be natural to have a Recommendation with more specific provisions.

Joint reply from the Danish Confederation of Trade Unions (LO), the Confederation of Academics (AC) and the Salaried Employees and Civil Servants Confederation (FTF): It would probably be expedient not to supplement the Convention by a Recommendation.

France. CFDT: No.

Germany. A Recommendation does not at present seem appropriate. Whether such provisions should be established in a possible Recommendation can only be determined after experience has been acquired with the Convention.

Japan. As the legal system concerning private employment agencies differs from country to country the Convention should indicate the direction of measures for implementation by each member State. Accordingly, it is appropriate to provide in the Recommendation those matters unable to be established in the Convention but which are desirable to be implemented by each Member.

NIKKEIREN: No. Even if the revised Convention deals only with the basic framework of the system and the direction of measures to be pursued, the diversity in the legal systems and actual conditions of private employment agencies among member States make it difficult to have detailed and concrete provisions in the Recommendation.

Kuwait. The Conference should adopt a Recommendation which provides for guidelines.

Netherlands. The Netherlands Government does not require a Recommendation; however, it will not stand in the way of an adoption of a Recommendation.

Joint reply from the FNV, CNV and MHP: The trade unions have a clear preference for discussing and adopting a revised Convention only.

Norway. LO: No.

Peru. Confederation of Democratic Workers of Peru (CTDP): No.

South Africa. BSA: There are a number of countries in which employment agencies are at an early stage of development. These countries would appreciate guidance from the ILO as to a possible framework of law for the regulation of these employment relationships in the form of a Recommendation.

Spain. The Government believes that a revision of the Convention would be sufficient, with each member State developing it in the context of its own labour market.

Spanish Employers' Confederation (CEOE): Yes, the International Labour Conference should adopt a Recommendation establishing standards for flexible application, with account being taken of the conditions of each country.

General Union of Workers (UGT): Yes.

Sweden. Even if the Recommendation were desirable, it is doubtful whether one could be produced in a single year.

United Kingdom. BIU: No.

United States. A major change as contemplated speaks to the need for such action.

USCIB: Each member State should be allowed maximum flexibility in choosing the degree and type of regulation that best suits its own situation. There are certain conditions, however, which have no applicability to some countries but which may be a significant problem for others. A Recommendation could, for example, address the abuses that frequently arise in the provision of agricultural gang labour in some developing countries.

United Steelworkers of America (AFL-CIO-CLC): No, due to the short amount of time given to do the work on this standard.

A sizeable majority of governments and many employers' organizations were in favour of the adoption of a Convention supplemented by a Recommendation. In their opinion, the discussion at the 81st Session (1994) of the Conference had generated basic ideas for the drafting of such instruments. With few exceptions, the workers' organizations were against the adoption of a Recommendation. They pointed out that the Committee on Private Employment Agencies had not mentioned a Recommendation at the 81st Session of the Conference. They also felt that the time available during the 85th Session (1997) was too short to draw up such an instrument.

In section B of the proposed texts, the Office has followed the advice of the majority of replies in favour of a Convention supplemented by a Recommendation. Taking into account the above-mentioned arguments, a Recommendation has been proposed to supplement the Convention but which does not go into too much detail on its application. It will be up to the Conference to decide if this approach constitutes a realistic basis for the revised standard.

II. Preamble

- Qu. 3** (1) *Should the Convention contain a preamble which refers to:*
- (a) *the existing Convention No. 96?*
 - (b) *the very different environment in which private employment agencies presently function?*
 - (c) *the role which they may play in a well functioning labour market?*
 - (d) *the need to protect workers against possible abuses?*
 - (e) *the Employment Service Convention, 1948 (No. 88)?*
- (2) *Should the preamble mention other relevant instruments? If so, which ones?*

Paragraph 1, subparagraph (a)

Total number of replies: 56.

Affirmative: 52. Australia, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Cyprus, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Denmark, El Salvador, Estonia, Ethiopia, Finland, Germany, Ghana, Guyana, Indonesia, Ireland, Japan, Republic of Korea, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Norway, Oman, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Spain, Sudan, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 1. Austria.

Other: 3. France, Kuwait, New Zealand.

Paragraph 1, subparagraph (b)

Total number of replies: 56.

Affirmative: 53. Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Indonesia, Ireland, Republic of Korea, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Norway, Oman, Peru, Philippines, Portugal, Romania, Sierra Leone, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 2. Japan, Poland.

Other: 1. New Zealand.

Paragraph 1, subparagraph (c)

Total number of replies: 58.

Affirmative: 54. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Cuba, Czech Republic, Denmark, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Indonesia, Ireland, Japan, Jordan, Republic of Korea, Lithuania, Mali, Mauritius, Netherlands, Nicaragua, Norway, Oman, Peru, Philippines, Portugal, Qatar, Romania, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 1. Poland.

Other: 3. Malaysia, New Zealand, Panama.

Paragraph 1, subparagraph (d)

Total number of replies: 57.

Affirmative: 54. Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Cyprus, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Ghana, Guyana, Honduras, Indonesia, Ireland, Japan, Jordan, Republic of Korea, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Norway, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 0.

Other: 3. Netherlands, New Zealand, Panama.

Paragraph 1, subparagraph (e):

Total number of replies: 48.

Affirmative: 47. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Cyprus, Colombia, Costa Rica, Côte d'Ivoire, Czech Republic, Denmark, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Indonesia, Ireland, Japan, Republic of Korea, Lithuania, Malaysia, Mauritius, Netherlands, Norway, Oman, Peru, Poland, Portugal, Romania, Sierra Leone, Spain, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 0.

Other: 1. New Zealand.

Paragraph 2

Total number of replies: 42.

Affirmative: 24. Australia, Austria, Belgium, Bulgaria, Canada, Chad, Colombia, Congo, Côte d'Ivoire, Cyprus, Czech Republic, Estonia, Ethiopia, Finland, Germany, Ghana, Guyana, Republic of Korea, Mali, Mexico, Peru, Sierra Leone, Sri Lanka, Zimbabwe.

Negative: 16. Bahamas, Chile, Cuba, Ecuador, France, Honduras, Hungary, Mauritius, Oman, Peru, Poland, Qatar, Spain, Sudan, Sweden, United Kingdom.

Other: 2. United States, Uruguay.

Argentina. UIA: (a)-(c) Yes.

CGT: (1) The preamble should establish a commitment by the signatories to the Convention and establish a general regulatory framework. (2) It should establish the bases on which a model employment service should function: under State control and with the best possible labour relations.

Australia. The preamble should also refer to the Migration for Employment Convention (Revised), 1949 (No. 97), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Austria. (a) No, because the existing Convention no longer corresponds to the actual requirements of the Austrian labour market and requests for job placement. (2) Reference could also be made to the Conventions listed on page 5 of Report IV(1). Mention should also be made of the proposed instrument on contract labour to be discussed at the 85th Session of the International Labour Conference.

Belgium. (c) Yes, but this should be qualified or contain additional considerations on the effects — and provided that the positive role of the public employment services is stressed again. However, the approach might give the impression that private agencies are the guarantors of the sound functioning of the market. (2) The Employment Policy Convention, 1964 (No. 122) and its accompanying Recommendation (No. 122); the Human Resources Development Convention, 1975 (No. 142); the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Migration for Employment Convention (Revised), 1949 (No. 97); and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Wallon Region: (d) In particular against the numerous abuses encountered by workers using employment agencies abroad. (e) An optimal organization of the labour market is contingent upon an efficient public employment service which acts as an intermediary for all services. It will be necessary to review the Employment Service Convention, 1948 (No. 88), taking into account the updating of Convention No. 96.

Brazil. CNC: A Recommendation, with mention of (b), (c) and (d). CNI: (1) Yes.

CNA: (1)(a) Yes.

CNC, CNI and CNA: (2) No.

Canada. The Employment Policy Convention, 1964 (No. 122) and the Human Resources Development Convention, 1975 (No. 142).

Chad. Conventions Nos. 95, 97, 111, 122, 142, 143, 150, 159, 168 and 173 should also be mentioned in the preamble.

Congo. (2) The Unemployment Convention, 1919 (No. 2); the Protection of Wages Convention, 1949 (No. 95); the Employment Policy Convention, 1964 (No. 122); the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1979 (No. 143); and the Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (No. 173).

Côte d'Ivoire. (2) The Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).

UGTCI: (2) The Protection of Wages Convention, 1949 (No. 95); the Migration for Employment Convention (Revised), 1949 (No. 97); the Employment Policy Convention, 1964 (No. 122); the Human Resources Development Convention, 1975 (No. 142); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Labour Administration

Convention, 1978 (No. 150); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and the Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (No. 173).

Cyprus. (2) The Migration for Employment Convention (Revised) 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

Czech Republic. (2) The Fee-Charging Employment Agencies Convention, 1933 (No. 34), and the Labour Administration Convention, 1978 (No. 150).

Denmark. Danish Employers' Confederation (DA): (2) Depending on the outcome of next year's discussion on the issue there may be a need to refer to ILO action in the field of contract labour.

LO and AC: (2) It is recommended that employers and employees be given equal status in terms of rights in relation to the preamble to the Convention. The revised Convention should also refer to the Conventions relating to discrimination (No. 111), employment policy (No. 122), protection of disabled persons (No. 159) and protection of wage and salary earners in the event of insolvency of their employer (No. 173).

Estonia. (2) The preamble should mention the instruments on contract labour (provided that they are adopted).

Finland. (2) The preamble could also cite conclusions drawn in the general discussion at the 81st Session (1994) of the International Labour Conference.

Central Organization of Finnish Trade Unions (SAK), the Finnish Confederation of Salaried Employees (STTK) and the Confederation of Unions for Academic Professionals (AKAVA): (2) The Confederations are of the opinion that the preamble to the Convention should refer to national governments' responsibilities concerning employment policy.

France. (a) The preamble of the new Convention should refer to the Employment Service Convention, 1948 (No. 88), to reiterate the need for a strong public employment service in each member State.

CFDT: (a) The revision of the Convention is necessary to provide workers with the protection they are not guaranteed at present. This new Convention is not only necessary for jobseekers and workers in temporary work agencies but also, to a wider extent, for all those whose normal employment relations are affected by the operations of these agencies. (2) Conventions Nos. 95, 97, 111, 122, 142, 143, 150, 159 and 173.

Germany. (2) It should be examined whether mention should be made in the preamble of the Placing of Seamen Convention, 1920 (No. 9).

BDA: In connection with (b) and (c), specific reference could be made to the need for and importance of good cooperation between the public and private placement services.

DGB: Reference should be made to the ILO's core Conventions, such as Conventions Nos. 96, 88, 111, 122, 150 and 168.

Ghana. (2) The Unemployment Convention, 1919 (No. 2); and the Fee-Charging Employment Agencies Convention, 1933 (No. 34).

Guyana. (2) Conventions Nos. 97 and 143.

Honduras. (c) The preamble of the new Convention should refer particularly to subparagraphs (c) and (d).

Indonesia. (b) Different environments and conditions such as the level of economic and social development should be taken into account.

Japan. (e) It should be clarified that there will be no change in the principle upheld in the Employment Service Convention, 1948 (No. 88) — i.e. that of maintaining and securing a public employment service available to all workers.

ZENROREN: (2) Conventions concerning discrimination, protection of wages, protection from dismissal, part-time work (No. 175), and public contracts (No. 94).

Jordan. Amman Chamber of Industry: (a) Yes. (2) Yes, instruments on employment promotion and protection against unemployment.

Federation of Chambers of Commerce and Industry and Amman Chamber of Industry: (b) and (e) Yes.

Federation of Chambers of Commerce and Industry: (2) No.

Republic of Korea. (2) The relationship between public employment agencies and private employment agencies.

Mali. (2) The protection of the workers concerned in the area of occupational safety and health.

Netherlands. (d) The desirability of protecting employees is unquestioned. The Netherlands Government considers, however, that the normal rules of law which apply to all citizens in the Netherlands offer sufficient protection against abuses.

Joint reply from the FNV, CNV and NHP: (d) Yes. (2) The Placing of Seamen Convention, 1920 (No. 9); the Protection of Wages Convention, 1949, (No. 95); the Migration for Employment Convention (Revised), 1949 (No. 97); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Employment Policy Convention, 1964 (No. 122); the Human Resource Development Convention, 1975 (No. 142); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Labour Administration Convention, 1978 (No. 150); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (No. 173).

Federation of Netherlands Industry and Employers: (VNO-NCW): (e) No. (2) No.

Peru. (2) The Protection of Wages Convention, 1949 (No. 95); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Poland. (b) All-Poland Trade Union Alliance (OPZZ) and Solidarnosc: Yes. (c) OPZZ and Solidarnosc: Yes.

Portugal. Confederation of Portuguese Business (CCP): (2) Depending on the discussions next year: the content of the employment contract.

Sierra Leone. (2) The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Labour Administration Convention, 1978 (No. 150); the Termination of Employment Convention, 1982 (No. 158) and their accompanying Recommendations.

South Africa. BSA: (a)-(e) and (2): Yes. Depending on the discussion of the issue, there may be a need to refer to ILO action in the field of contract labour.

Spain. UGT: The preamble should refer to the subjects mentioned and further specify that private employment agencies do not exclude public employment services — adapted to the tripartite administration of employment policy — which might be usefully supplemented by private agencies. Alongside the protection of workers, the need to guarantee the full exercise of the right to freedom of association in these agencies should also be stressed.

Sri Lanka. Conventions Nos. 97 and 143, and Recommendation No. 100.

Switzerland. (a) The preamble should refer to the circumstances which have prompted a revision of Convention No. 96, and especially the need to adapt conditions to allow for an optimal governance of the labour market with a view to full employment — recognized as a priority by the Social Summit in Copenhagen.

CSC/CNG: (a)-(b) No. (c), (d), (e) Yes.

SVUTA-FSETT: (1) Yes. (2) Depending upon the outcome of the relevant discussions held next year, it may prove necessary to make reference to the ILO position on contract labour.

Turkey. TISK: (2) The preamble could mention the Employment Policy Convention, 1964 (No. 122), because of its relevance.

United Kingdom. BIU: (a) Convention No. 96 should be revised, not replaced. The preamble should note corruption in employment agencies which has repercussions on jobseekers, temporary workers and permanent workers — whose jobs are affected by the existence of temporary workers willing to work for less pay and benefits. (e) No. (2) The Protection of Wages Convention, 1949 (No. 95); the Migration for Employment Convention (Revised), 1949 (No. 97); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Employment Policy Convention, 1964 (No. 122); the Human Resources Development Convention, 1975 (No. 142); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Labour Administration Convention, 1978 (No. 150); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and the Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (No. 173).

United States. (2) While a "boiler plate"-type reference may be included, such language would probably not add clarity to the intent of the new Convention.

USCIB: (b) The preamble should establish the basis for the subsequent provisions that leave to each member State decisions regarding the need for and type of regulations. (d) No. The preamble should mention the need to protect workers against actual but not "possible" abuses. (e) No. (2) No.

AFL-CIO-CLC: (2) The Protection of Wages Convention, 1949 (No. 95); the Migration for Employment Convention (Revised), 1949, (No. 97); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Employment Policy Convention, 1964 (No. 122); the Human Resources Development Convention, 1975 (No. 142); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Labour Administration Convention, 1978 (No. 150); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

Zimbabwe. (2) The Human Resources Development Convention, 1975 (No. 142).

The replies to this question reiterated the views put forward under "general observations" and previous questions. Many governments felt that an improvement in the functioning of labour markets was a vital objective of the revision. Parts II and III of the present Convention were outdated. Although the monopoly of the public employment services was no longer effective as an instrument of labour market administration, the service remained vital for a sound functioning of these markets. Several employers' organizations did not share this opinion.

The majority of governments recommended a relatively short preamble; however, they stressed the abuses encountered by migrant workers. Consequently, a reference to the Conventions on migrant workers has been added in the preamble, section A, of the proposed texts.

Most of the workers' organizations, supported by a number of governments, felt that the preamble should be supplemented by references to other Conventions covering areas in which workers were particularly vulnerable. Given the arguments contained in the majority of replies, the Office did not comply with this proposal to extend the preamble.

III. Definition and scope of application

Qu. 4 *For the purposes of the instrument or instruments:*

- (a) *Should the term "private employment agency" mean any natural or legal person, independent of the public administration which provides one or more of the following labour market services:*
 - (i) *services for matching demand and supply without the agency becoming a party to the employment relationship;*
 - (ii) *services consisting of recruiting workers, who are employees of the agency, with a view to making these workers available to a natural or legal third party user who assigns their tasks and supervises the execution of these tasks;*
 - (iii) *services such as training, provision of information or any other employment-related services that are provided without seeking to match specific supply and demand?*
- (b) *Should the term "private employment agency" exclude entities providing employment-related services only incidentally to their main activity, such as:*
 - (i) *media or information networks?*
 - (ii) *educational institutions?*
 - (iii) *trade unions?*
- (c) *Should the term "workers" include jobseekers?*

Subparagraph (a), (i)

Total number of replies: 68.

Affirmative: 63. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Jordan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Uruguay.

Negative: 2. Malaysia, Poland.

Other: 3. Bangladesh, New Zealand, Zimbabwe.

Subparagraph (a), (ii)

Total number of replies: 58.

Affirmative: 49. Argentina, Australia, Bahamas, Belgium, Bulgaria, Canada, Chad, China, Colombia, Congo, Cuba, Cyprus, Czech Republic, Denmark, Ecuador,

Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Nicaragua, Oman, Panama, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Spain, Slovakia, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay.

Negative: 6. Austria, Chile, Germany, Malaysia, Norway, Sri Lanka.

Other: 3. New Zealand, Netherlands, Switzerland.

Subparagrah (a), (iii)

Total number of replies: 59.

Affirmative: 37. Argentina, Australia, Bahamas, Belgium, Bulgaria, Canada, Chad, China, Colombia, Congo, Côte d'Ivoire, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Ghana, Guyana, Honduras, Indonesia, Ireland, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Panama, Portugal, Qatar, Sierra Leone, Slovakia, Spain, Thailand, Turkey, United States, Uruguay.

Negative: 18. Austria, Chile, Cuba, Cyprus, Czech Republic, France, Germany, Hungary, Japan, Malaysia, Netherlands, Norway, New Zealand, Oman, Poland, Romania, Sri Lanka, Sweden.

Other: 4. Finland, Nicaragua, Switzerland, United Kingdom.

Subparagrah (b), (i)

Total number of replies: 61.

Affirmative: 45. Australia, Bahamas, Bangladesh, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, Germany, Ghana, Guyana, Hungary, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Peru, Philippines, Poland, Portugal, Qatar, Romania, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 13. Austria, Belgium, Colombia, Denmark, Estonia, Ethiopia, Finland, France, Indonesia, Japan, Malaysia, Norway, Panama.

Other: 3. Honduras, Ireland, New Zealand.

Subparagrah (b), (ii)

Total number of replies: 60.

Affirmative: 45. Australia, Bahamas, Bangladesh, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, Ethiopia, Germany, Ghana, Guyana, Hungary, Jordan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Peru, Poland, Portugal, Qatar, Romania, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Thailand, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 13. Austria, Belgium, Colombia, Denmark, Estonia, Finland, France, Honduras, Indonesia, Japan, Malaysia, Norway, Panama.

Other: 2. Ireland, New Zealand.

Subparagraph (b), (iii)

Total number of replies: 61.

Affirmative: 46. Australia, Bahamas, Bangladesh, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, Germany, Guyana, Honduras, Hungary, Indonesia, Jordan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Peru, Poland, Portugal, Qatar, Romania, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 12. Austria, Belgium, Colombia, Denmark, Estonia, Ethiopia, Finland, France, Japan, Malaysia, Norway, Panama.

Other: 3. Ireland, New Zealand, Switzerland.

Subparagraph (c)

Total number of replies: 63.

Affirmative: 51. Australia, Austria, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Honduras, Ireland, Japan, Kuwait, Malaysia, Mali, Mauritius, Netherlands, Nicaragua, Norway, Oman, Panama, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Spain, Sudan, Sweden, Switzerland, Thailand, Turkey, United States, Uruguay.

Negative: 11. Guyana, Hungary, Indonesia, Jordan, Republic of Korea, Mexico, Peru, Sierra Leone, Sri Lanka, United Kingdom, Zimbabwe.

Other: 1. New Zealand.

Argentina. UIA: (a)(iii) to read "any other employment-related services such as training, etc.". (b) No. The concept is sufficiently clear and precise as defined in (a). (c) No. The term "workers" should not be confused with "jobseekers", since the two are very different, even for the purpose of this proposed Convention and Recommendation.

CGT: (a)(ii) There is a need to establish the function to be played by the State as a controlling body. (b) The private employment agency does not necessarily need to have a specific objective, since it may provide assistance in training and guidance, which are useful means of promoting employment. (c) Yes.

Australia. (a) The term, "independent of the public administration" requires clarification. For example, it is not clear whether a PREA contracted by the public administration for the purposes of say (iii), and funded solely or mainly by government, would be covered by the above definition. (b) Yes. The inclusion of these entities in the scope of the instruments would risk the extension of the regulatory framework beyond its anticipated bounds with the potential to distort other markets and to have an adverse impact on labour market themselves.

Australian Chamber of Commerce and Industry (ACCI): (a)(iii) Entities of the type referred to in (a)(iii) should fall within such a definition only if they also fulfil the functions outlined in either (a)(i) or (a)(ii). (b) Employers' associations should also be excluded. (c) No.

Austria. (a)(i) The term "private employment agency" should only refer to clause (i). As regards the services described under clause (ii) which consists of making workers available, the term "private employment agency" could possibly be acceptable if taken in the widest sense; the wording used in clause (iii) automatically excludes placement activities. (b)(i) The activities of these institutions which set out to bring workers and employers together should also be considered — as should those of employers' organizations — as activities undertaken by private employment agencies. (c) For reasons of terminology, a distinction should be made between workers and jobseekers, except in the case of regulations which refer specifically to workers made available as implied in question 4 (a)(ii).

BAK: (a)(ii) The BAK has reservations on the inclusion of services attributable to the hiring out of labour.

VÖI: (b) The VÖI agrees these entities should be excluded from the concept of "private employment agencies" but feels that the list contained in this clause is too short. Employers organizations should also be added.

Bangladesh. (a)(i) A "private employment agency" should be subject to the supervision of the competent authority.

Belgium. (b) These three items should not be the only ones to be excluded. Other entities for providing employment-related services which are not directly a priority for them could also be added to this list. (c) Yes, employed or not, irrespective of the worker's social status.

Wallon Region: The definitions contained in the revised standard should not be restricted to defining its general scope but also make it possible to define other concepts on the basis of which the actual content of the standard is elaborated (concepts of employment, of workers, profit-making status, public administration, etc.). (a)(ii) Mention should be made of the particular case of subcontracting services which should remain incorporated in the overall area of temporary work activities.

Brazil. CNC: (a)-(c) Yes.

CNI: (a) The hypothesis of a natural person should be avoided. The agency should always be an enterprise. (i) Yes. (ii) No. These activities are different from those which should be carried out by private employment agencies. Such agencies should not be confused with temporary work agencies. (iii) Yes. (b) No.

CNA: (c) Yes.

Canada. (a)(i)-(iii) Yes, provided that training in (iii) is not interpreted so broadly that it might, for instance, include training dispensed by private post-secondary level institutions.

Chile. (a) Chilean legislation only regards agencies corresponding to the definition given in (i) as "private employment agencies".

Congo. (c) Yes, even if in this case it means jobseekers; the aim is to guarantee them better social protection by enabling them to benefit from labour legislation.

Costa Rica. (b) Should be excluded because these entities provide incidental services to their clients or members and they should not be lumped together with manpower placement services.

Côte d'Ivoire. UGTCl: (a) The scope of agencies covered by the Convention should not be extended. The concept of "user enterprise" implies that temporary work agencies must also provide workers with equipment and assume functions of management and supervision. The subcontracting which implies supervision is irrelevant for a new Convention on contract labour. Emphasis should be placed on worker protection. The criteria defining temporary work should incorporate restrictions on temporary working time and a list of tasks that can be performed by temporary workers. Temporary work must not be used to replace striking workers in a given enterprise. (b) No. (c) Yes.

Cyprus. (a)(iii) No. The text as proposed is very general and can be interpreted in various ways. However, short training courses or the provision of information related directly to the activities referred to clauses (i) and (ii) could be considered as falling within the activities of PREA. (b)(iii) Employers' organizations should also be excluded.

The Pancyprian Federation of Labour (PEO): (a)(ii) No. (a)(iii) Yes.

Czech Republic. (a)(ii) For the time being, the legal system of the Czech Republic does not recognize this type of agency; however, the Government agrees with their inclusion in the definition. The national legislation should ensure the same status, treatment and protection of employees involved in this type of relationship as those enjoyed by other employees. (a)(iii) Services such as training should be excluded; information, counselling, medical analyses i.e. (psychological tests), etc., should be included. (b)(i), (ii) and (c) A number of employers are of the opposite opinion.

Czech-Moravian Chamber of Trade Unions (CMK-OS): (a)(iii) They should have special licences from an authorized institution (accreditation), so that the quality of these services could be ensured and brought in line with supply and demand on the labour market.

Denmark. LO, AC and FTF: (a) The definition "private employment agency" seems to be too broad; the LO and AC feel that it should perhaps be analysed in further detail; the FTF considers this necessary. (b) Yes.

DA: (a)(iii) If the service is primarily active in (i) or (ii), yes; if not, no. (b) Yes.

El Salvador. (a) The Government feels that the term "legal person" is unacceptable from the standpoint of El Salvador's civil legislation as it draws a distinction incompatible with the country's legal system.

Finland. (a) The term "private employment agency" should refer to any operator providing the services described in clauses (i) and (ii). (b) The principles concerning private placement services included in the Convention should apply to all private employment services, including the media, educational institutions and trade unions, notwithstanding that employment-related services are secondary to their main activity. "Private employment services" might offer a more relevant definition, as it would cover all providers of employment services, including those who offer this service on an incidental basis. (c) The term "workers" should preferably be substituted/supplemented by an alternative term such as "job applicant" or "client".

Confederation of Finnish Industry and Employers (TT) and the Employers' Confederation of Service Industries (LTK): (a) The definition "private employment agency" should be restricted to that specified in clause (i). (a)(ii) Labour-only contracting should be fully excluded from the Convention.

SAK, STTK and AKAVA: (a)(iii) Yes.

France. (a) The term "private employment agency" should be used only to refer to natural or legal persons, independent of the public administration, which provides services for matching demand and supply — whether or not the agency is a party to the employment relationship. (b) It would be advisable to include in the term "private employment agency" any entity independent of the public administration which, in one way or another —, irrespective of whether this is their main activity or incidental to this activity — provides services for matching supply and demand. This would make it possible to apply a common ruling to all entities operating on the placement market, whether or not these services are their main activity or only incidental to their main activity.

CFDT: (a)(ii) This definition corresponds the most to what the CFDT understands by a "private employment agency". (b) Yes.

Germany. (a) The activity of a hirer out is to be considered independent of and distinct from the occupation of a labour placement intermediary. This important difference between labour placement and the hiring out of labour should not be blurred in the Convention. In so far as the hiring out of labour is included in the Convention, Members which are signatories should be given the possibility to make exemptions from the scope of the Convention if worker protection is guaranteed by other measures at the national level. The services indicated in (iii), contradict the term "private employment agencies" as they do not provide or intend to provide any labour placement in the sense used in (i). They should therefore not be included. However, in so far as

they place their client in dependent employment, over and above the services indicated in (iii), their activity would be covered by (i). (b) Yes. (c) Yes, if a person is seeking dependent employment.

BDA: (a) The BDA believes that a clear and unambiguous definition of the public and private placement services is indispensable. It feels that placement sets out to bring jobseekers in contact with employers to establish an employment relationship. This is best reflected in (i) and (ii), although the special problems of the hiring out of labour must be taken into account. The direct services to which reference is made in provision (iii) are not consistent with the essential characteristics of "placement" and should be considered as a free, commercial activity. (b) Mention should also be made of employers' associations and their bodies.

DGB: (a)(ii) If employers' functions cannot be regulated by a revision of Convention No. 96, they must be spelt out in the proposed Convention on contract labour. (b) No. In so far as these activities are carried out by private employment agencies, they should also be regulated by the Convention. It would also seem necessary to have a definition of free non-profit-making private placement.

Honduras. (a) The definition of the term "private employment agency" should incorporate all of the components characteristic of the services they perform on the labour market and which are listed in the clauses — without overlooking the components specific to other fee-paying agencies. (b)(i) The Government is of the opinion that these entities must comply with the definition of private employment agencies; in the case of the media and worker's organizations, they are outside the definition of these agencies.

Hungary. (a) The services stipulated in clause (iii) do not correspond to those of a labour exchange. The employment agency may fulfil such tasks in addition to its activities specified in clauses (i) and (ii). According to the Government, the agencies specified in clause (ii) fall more within the scope of the proposed Convention on contract labour, than within the scope of this Convention. (b) Organizations which provide employment-related services only incidentally to their main activity do not fall within the category of "private employment agency". (c) If the issue is whether or not the employment agency should be obliged to provide information on existing jobs both to employees in an employment relation and unemployed jobseekers, then the term of "worker" should be applied to both categories.

Indonesia. (a) The term "private employment agency" cannot refer to a person but to an institution which consists of people with different tasks and has a professional management. (a)(ii) Yes, but only for recruiting workers for legal third party users. (a)(iii) Services should include only labour market information. (c) The term "workers" does not generally include jobseekers, although a worker can be a jobseeker if he or she wants to change jobs.

Ireland. The Government would support a broad definition which could be suitably defined in national legislation to suit domestic circumstances. In addition it feels that national governments should be free to decide on exemptions but the Convention could quote examples or parameters.

Japan. (a)(i) Services which are provided in relation to matching demand and supply, such as counselling or training, should be included. (ii) In respect of this second category, regulation is required. (iii) As these services are not specifically for matching specific demand and supply, regulation would be excessive. This category should therefore be included in the Recommendation. Training should be excluded from this clause, as there are international instruments (Conventions Nos. 117 and 142) on this subject, except in cases in which the training is provided as an inseparable part of the services defined in (a)(i). (b)(ii) In view of nature of services provided by educational institutions or trade unions, there would be little concern that employment services provided by these organizations would cause undue abuses. However, unless these organizations are equipped with a certain level of capability, regulations are required. (c) A person who is in the process of seeking a job is included in the term "workers" in Conventions Nos. 88 and 96 — and this precedent should be followed.

NIKKEIREN: (a)(iii) If services relevant to (i) are developed, they might be quite similar to (iii). In addition, employment services and other related services vary from country to country according to labour market conditions.

ZENROREN: (a)(ii) No. (a)(iii) Yes.

Jordan. Federation of Chambers of Commerce and Industry: (a)(i) No. (a)(ii) Yes. (a)(iii) No. (b) Yes. (c) Yes.

Amman Chamber of Commerce: (a)(ii) No. (a)(iii) Yes. (b) Yes.

Republic of Korea. (a) The term should also mean any organization that provides employment to jobseekers, irrespective of whether this is for a fee or free-of-charge. (c) Since the term "workers" in general refers to persons providing labour for others, jobseekers should naturally be excluded from the concept of workers.

Kuwait. (c) Yes, as well as those capable of working.

Mali. (a)(iii) It would be expedient to specify that these refer only to services (training or other employment-related training) provided exclusively by employment agencies with a training centre.

Mauritius. (c) Yes, as the agency caters both for the worker seeking a better job or the jobseeker after his first employment.

Mexico. Activities relating to the subcontracting of workers in order to provide services to other enterprises should be excluded. The instrument should specify that once PREAs have fulfilled their function they should not interfere between the user enterprise and the worker. The enterprises or persons whose principal activity is "hiring personnel" to enterprises or who assume responsibility in the contracting of jobseekers, should be subject to specific laws and regulations. (c) The Government suggests that the term "worker" be replaced by "jobseeker", rather than including it.

Netherlands. (a)(ii) The Netherlands Government would not oppose the inclusion of private employment agencies which become party to the employment contract by making workers available to a natural or legal third party user, but only if the following condition is met: those agencies in triangular relationships should not be subject to a licensing system because the costs of such a licensing system are disproportionate to its social impact. (b)(iii) If labour organizations perform the activities referred to in (a)(i), then the formulation of the statutory code of conduct should also relate to them.

Joint reply from the FNV, CNV and MHP: (a)(iii) No, because the inclusion of these services would complicate discussions seriously. Legal persons incorporated on the basis of private law on the initiative of the public administration should also be covered.

New Zealand. (a)(iii) New Zealand does not see the services identified in this clause as part of the central functions of an employment agency, although they may be provided as peripheral services. These services should be treated in the same way as other training providers or providers of information, in accordance with national practice.

Nicaragua. (a) The Government feels that, in the Spanish text, the term "persona natural o juridica" would be more appropriate than "persona fisica o moral". (a)(iii) This clause should be part of subparagraph (b) because it refers to services incidental to the main activity of agencies.

Norway. (a)(ii) Triangular relationships as provided for by TWAs fall outside the scope of Convention No. 96, as this is an employer-worker relationship with the temporary work agency assuming normal employer obligations.

LO: (b) Yes.

Panama. (c) Jobseekers should be considered as workers in order to improve their image and bring this provision more in line with the rest of the draft Convention.

Peru. (c) No, since the term "workers" refers to persons performing a service for which they receive remuneration, in a situation of subordination, and jobseekers do not meet these criteria.

Poland. OPZZ: (a)(i), (iii) Yes. (b)(iii) No.

Solidarnosc: (a)(i), (iii) Yes. (b)(i) Yes. One of the features defining "private employment agencies" should be a main and permanent character of the employment-related services performed by them. (c) Yes. A jobseeker is always a potential worker or a worker looking for a new job.

Portugal. (c) Although the Government accepts that the term "workers" should as a rule include jobseekers, attention should be given to whether the system established in each standard is appropriate to unemployed persons looking for employment; if not, the appropriate derogations should be made. The Confederation of Portuguese Industry (CIP): (a)(ii) The CIP has reservations concerning the inclusion of (ii). (b)(i) The CIP excludes only the institutions referred to in (i).

CCP: (a)(iii) If the services described in (i) and (ii) are active — yes; if not, no. (c) In what context? A jobseeker may or may not be a "worker" — i.e. an unemployed person or a person undergoing training.

The General Union of Workers (UGT): (a)(ii) The UGT would like to see this clause excluded from the scope of the Convention, for regulation by national legislation.

South Africa. BSA: (a) and (b) yes, provided the services in (a)(iii) are primarily active in (i) and (ii). (c) No.

Spain. (a)(i) Yes, although the term "private employment agency" should be reduced to "employment agency", and be applicable to any natural or legal person, independent of the public employment services.

CEOE: (a)(i) The emphasis in the case of private employment agencies should be on placement services, whether as regards (i) or (ii). The services indicated in (iii) should be excluded. (b) Such bodies should be excluded from the definition.

UGT: (a) The UGT feels that it is inappropriate to include clause (iii) in the definition because this would presuppose that one of the basic aspects of the fundamental right to work would be privatized and made commercial; this should be a matter for the State and not be subjected to market interests. (i) It should be specified that the services must be entirely free-of-charge, otherwise jobseekers right have to face serious economic consequences and be open to considerable abuse. (ii) It should be clearly established that the services are of a provisional nature in order to avoid undermining the very foundations of labour law.

Sweden. (a)(ii) The definition proposed in (a)(i)-(ii) seems appropriate. The Convention should make a clear distinction between private employment agencies and rental firms. The simplest way of doing this would presumably be to write a separate section on rental firms. Rental firms engage in an activity which in many ways is segregated from that of an employment agency.

Switzerland. (a) The term "private employment agency" should not include either temporary work agencies (ii) or employment-related services provided "without seeking to match specific supply and demand" (iii). These services, as well as those entities under (b)(i) and (ii) could be dealt with by the Recommendation. (b) The term "private employment agency" should include workers' and employers' organizations, or any other institution committed to the common cause, carrying out their functions on a regular basis in return for remuneration.

CSC/CNG: (a)(i)-(iii) Yes. (b)(i) No.

SVUTA-FSETT: (a)(ii) Yes. (a)(iii) Yes, if the beneficiaries are principally those falling under (a)(i) and (ii); otherwise, no. (b) Yes. (c) In what context? A jobseeker may or may not be a worker.

VSA: (a) Yes. (b) In Switzerland, for example, workers' organizations engage in private job placement; consequently, these workers' organizations may not be automatically excluded from the concept of private employment agencies.

Turkey. TISK: (b)(iii) In countries where private employment agencies are not developed professionally, this function is carried out by trade unions, educational institutions and the media. (c) As the prime objective of these agencies is to find jobs, the definition of "workers" should also cover "jobseekers".

United Kingdom. (a)(iii) The definition and scope should cover all jobseeking or job-finding services provided by the private sector but should not extend to training providers unless they also provide those services. (b) The term "private employment agency" should only be used in relation to entities which earn income from jobseeking or job-finding services.

CBI: (a)(iii) No, unless they are also in the business of placing workers. (c) An agency "temp" who is between jobs is both a temporary "worker" and a "jobseeker". However, a "jobseeker" may not yet be a temporary "worker". The context needs to be specified.

BIU: (a)(iii) Yes. (b)(i)-(iii) No. (c) Yes.

United States. (a) Yes. The three aspects of the term "private employment agency" as presented in this question seem to capture the range of forms that such an agency might assume. (b) The three entities suggested for exclusion from the term "private employment agency" would demonstrate an understanding of the primary role and functions of those entities. (c) Workers may simultaneously be jobseekers, but even in instances where that is not the case, both workers and jobseekers should be afforded the opportunities and protection envisaged by a new Convention.

USCIB: (a)(iii) No. They do not act any more directly on the labour market than, for example, transportation or child-care services or general education. (c) Yes, provided that the provisions of any new Convention and Recommendation make a logical and economically realistic differentiation between the status of workers who are jobseekers and workers who are PREA employees.

AFL-CIO-CLC: (a)(ii) Activities of specific TWAs that are beyond their traditional scope of activities should be covered by the proposed Convention on contract labour.

Zimbabwe. (b) Media or information networks, educational institutions or trade unions should not be termed private employment agencies. Such entities can only be termed "private employment agencies" when placement becomes their major activity. (c) There should be a clear distinction between the terms "workers" and "jobseekers". The term "worker" should refer to a person who is employed while the term "jobseeker" should refer to a person who is actively looking for employment.

In spite of the wide variety of national conditions, the replies concerning the definition of a private employment agency were fairly much on the same lines; only a few governments saw any difficulty in putting both "intermediaries" and "skills providers"² in the same Convention. The Office therefore incorporated these provisions in Article 1 of the proposed Convention. However, many governments found it difficult to include direct services. The proposed text therefore no longer refers to training.

A number of governments and the majority of workers' organizations wanted the concept of private employment agency to include both enterprises providing employment-related services as their main activity and entities providing these services only incidentally to their main activity. However, a majority were in favour of excluding entities which only provided incidental services. The Conference may wish to go more deeply into this question. The majority of replies stated that jobseekers should be considered as being in the same category as workers. This provision has been included in Article 1 of the proposed text.

² ILO: *Revision of the Fee-Charging Employment Agencies Convention (Revised)*, 1949, Report IV(1), International Labour Conference, 85th Session, 1997, p. 27.

Should the instrument or instruments cover all workers and all branches of economic activity and occupations?

Qu. 5

Total number of replies: 66.

Affirmative: 52. Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Bulgaria, Chad, Chile, China, Colombia, Congo, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Ethiopia, Finland, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Jordan, Kuwait, Lithuania, Malaysia, Mauritius, Mexico, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Portugal, Qatar, Saudi Arabia, Sierra Leone, Singapore, Sri Lanka, Sweden, Switzerland, United Kingdom, Uruguay, Zimbabwe.

Negative: 10. Costa Rica, Côte d'Ivoire, France, Republic of Korea, Mali, Poland, Romania, Spain, Sudan, United States.

Other: 4. Canada, Estonia, New Zealand, Turkey.

Argentina. (questions 5-6) As regards the scope of application, the proposed Convention should not *a priori* exclude branches of economic activity or occupations and it should be left to each member State to establish restrictions in its respective national legislation in accordance with national practice and the specific forms and/or problems of its respective labour market.

Australia. The Convention should provide a general set of principles applicable to the labour market, regardless of the character of work undertaken or the branch of economic activity or occupation. The Convention should allow member States to focus their regulatory framework on those areas which require control and avoid interference with well developed and efficient parts of the labour market.

ACCI: It is appropriate that an instrument has the potential for universal application with provision for exclusions and exemptions. As to its coverage of workers, that should be universal — bearing in mind the caveat contained in ACCI's response to question 4 and the need to allow exemptions.

Brazil. CNC, CNI and CNA: Yes.

Chile. With the exception of seafarers.

Costa Rica. The Government does not believe that the instrument should apply to all branches of economic activity and occupations because in Costa Rica there are seasonal workers in a number of agricultural activities and a high percentage of foreign migrant workers in the building industry. There would consequently be an overlapping in the legislation in so far as so-called "intermediaries" would be able to obtain a permit for migrant workers and also subcontract temporary workers; this should not be allowed.

Cuba. The instrument should cover all workers and occupations in which the agencies in question are involved.

Czech Republic. The instrument should cover all branches of economic activity and occupations; however, the State should have the possibility to exclude some of these if necessary.

Estonia. This might be regulated by national legislation.

France. The possibility of excluding certain occupations or branches of economic activity from the scope of the instrument should be left to the competent authorities.

CFDT: The Convention should apply to all branches, workers and occupations unless there are other international standards granting similar protection — or governments can prove that certain workers are guaranteed the same level of protection by other means.

Honduras. The Government feels that given the actual situation prevailing in Honduras, the instrument should cover all workers and branches of economic activity because the instrument or instruments drawn up will serve as a reference for regulating the operations of private employment agencies.

Ireland. The Government agrees in theory, but feels that national governments should be free to decide on exemptions.

Japan. ZENROREN: Only for specified or highly specialized occupations. In particular, specific areas such as construction or stevedore work, in which illegal agents or intermediates might easily intervene, should be covered by public employment services.

Republic of Korea. In accordance with the environment and regulations of the labour markets in each member State, private employment agencies may be forbidden to introduce or supply workers to a specific field or occupations. As a result, private employment agencies should not cover all workers and all branches of economic activity and occupations.

Kuwait. Yes, according to requirements in the national interest.

Mexico. Yes, taking care that this does not exclude the possibility of recommending special treatment to match supply and demand in those activities or occupations in which more strict control would be desirable, for example in relation to special categories of workers.

Norway. It should not cover the placement of seafarers.

Peru. The jobs available have not only become more diversified but require an increasingly high level of training. Therefore the instrument should cover all jobseekers, and all branches and occupations except for a few exclusions referred to in question 6.

CTDP: The scope of application should not exclude any branch of activity. The coverage of workers should be extended.

Philippines. Yes, but seafarers should be excluded.

Poland. OPZZ and Solidarnosc: Yes.

Portugal. CCP: In principle, yes; it would depend on the arguments of certain sectors.

Saudi Arabia. Yes, taking paragraph 6(1) into account.

Spain. The instrument should expressly provide that any Member may with justification establish exceptions to the general scope, which would give greater flexibility to the Convention.

UGT: (Questions 5 and 6) The Convention should be applicable to all branches of activity. If this were not the case, the Government of the member State would only be able to decide upon the exclusion of a specific sector after having conferred with the most representative organizations — and it would have to give account of this in the first report on the application of the instrument in question.

Sudan. No, because the tendency at the national level is to limit the role of private employment agencies to employment abroad. Consequently, these agencies would not be allowed to deal with some occupations for which a shortage exists in the local labour market.

Switzerland. CSC/CNG: No, in the event of certain branches or occupations repeatedly committing abuses, the State should have the possibility of excluding them from the scope of the instrument.

VSA: The instrument must apply to all workers in all branches of economic activity and occupations.

Turkey. Depending on the definition of work, the inclusion of certain categories should be left to the ratifying member States.

TISK: The instruments to be developed should cover all workers and all branches of economic activity and occupations, thereby guaranteeing uniformity.

United States. The existing Convention excludes some categories of workers (e.g. seafarers). There may be additional categories of workers for whom inclusion would be awkward, impractical, or illogical. This is perhaps best left to the discretion of the individual Members.

USCIB: The instrument should be at a sufficiently general policy level so that it can encompass all workers.

AFL-CIO-CLC: All workers should be included for coverage under the new Convention unless already covered by another international labour standard which affords similar or better protection — unless it can show that workers are receiving at least the same level of protection through other means.

The replies to questions 5, 6 and 7(3) clearly provided the framework for the application of the instrument; this is reflected in Article 2 of the proposed Convention.

The majority of governments felt that the instruments should apply to all workers and all branches of economic activity. However, a number of these governments wanted to have more leeway to exclude certain cases likely to lead to abuse. As it was difficult to determine the supply of direct services (see question 4), it was decided that provision should also be made to exclude this concept from the scope of the instrument if necessary. The workers' organizations were of the opinion that the Convention should apply to all workers, branches and occupations, unless more favourable provisions for workers were provided for elsewhere. The employers' organizations were, on the whole, in favour of an instrument covering all workers. The wording of proposed Article 2 takes account of these observations.

- (1) *Should the Convention provide that, where appropriate, the competent authority, after consultation with the most representative organizations of employers and workers, could exclude certain branches of economic activity or occupations, such as seafarers,³ port workers, artists or high level professional staff, from its scope of application?*
- (2) *If so, should the Convention provide that each ratifying Member should indicate, in its first report on the application of the Convention to be submitted in accordance with article 22 of the Constitution of the International Labour Organization, these exceptions proposed, together with the reasons for them?*

Qu. 6

Paragraph 1

Total number of replies: 65.

³ This could be the case in particular for a Member having ratified the Placement of Seamen Convention, 1920, (No. 9), or another international instrument on this subject.

Affirmative: 56. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, France, Germany, Ghana, Guyana, Honduras, Ireland, Republic of Korea, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United States, Uruguay.

Negative: 6. Colombia, Finland, Hungary, Indonesia, Jordan, Zimbabwe.

Other: 3. Japan, New Zealand, United Kingdom.

Paragraph 2

Total number of replies: 56.

Affirmative: 48. Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, China, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, France, Germany, Ghana, Guyana, Honduras, Ireland, Japan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Spain, Sweden, Thailand, Turkey, United States, Uruguay, Zimbabwe.

Negative: 4. Cuba, Panama, Sri Lanka, Sudan.

Other: 4. Australia, New Zealand, Norway, United Kingdom.

Argentina. UIA: (2) No. If private employment agencies do not operate appropriately, these will simply not be used by employers or workers and will disappear from the market.

CGT: (2) Prior consultation with workers' organizations and employees is both necessary and extremely positive, particularly if it is made compulsory — i.e. it places a restriction on the acts of the competent authority.

Australia. (2) In order to provide ratifying member States with the capacity to respond to changing conditions, additions or changes to the exemptions at a later date should not be ruled out. Australia therefore proposes that the words "first report" be replaced with "reports".

ACCI: (2) Should such a provision be adopted, it is appropriate that ratifying Members indicate to the ILO any exemptions proposed and the reasons for them. The ability of member States to grant exemptions must be as flexible as possible to meet the needs of changing labour markets.

Belgium. (1) Yes, but with specific regulations which the competent authority would be called upon to specify.

Wallon Region: (2) Yes, taking into account that this is a list likely to be changed over time.

Brazil. CNC and CNA: (2) No.

CNI: (1) and (2) Yes.

Congo. (1) Yes, it is necessary to take account of the specific nature of certain branches of economic activity or occupations (merchant marine, civil aviation, etc.).

Costa Rica. This exclusion could be envisaged after consultation with the employers' and workers' organizations so as not to interfere with the development of the labour market.

Côte d'Ivoire. Under national legislation, temporary work agencies and agencies recruiting or placing seafarers are excluded from the scope of application of employment agencies. Placement by bar or hotel managers, second-hand clothes merchants, pawnbrokers and money changers is also banned.

Czech Republic. (1) A number of employers oppose this.

Denmark. It would probably be appropriate to permit the countries to grant exemptions from the Convention or parts of the Convention for certain categories of persons.

DA: (1) and (2) No.

LO, AC and FTF: (1) Yes, but existing international and national agreements should be taken into consideration.

Finland. (1) The Government sees no need to include provisions allowing exclusions to be made at national level.

TT and LTK: The Confederations believe that the Convention should include provisions enabling exclusions to be made at national level; they believe that the proposed exceptions should be indicated in the first report on the application of the Convention.

Germany. (1) Such possibilities of differentiation are to be welcomed, since they allow account to be taken of national conditions, and thus facilitate the ratification of the Convention.

DGB: (1) No.

Honduras. It is vital to have a system or regulations to establish responsibility in the case of abuse committed against a worker, irrespective of whether this is in a direct or indirect employment relationship.

Hungary. It is advisable to authorize the member States to establish further conditions with respect to the characteristics of economic activity, occupations and placement, which exceed those specified in the Convention.

Indonesia. No, the Convention should include all sorts of jobs and occupations, such as seafarers, port workers, artists or high professional staff.

Japan. It should be specifically stated in the Convention that seafarers be excluded from this Convention. No other occupations should be excluded.

NIKKEIREN: The revised Convention should provide that certain branches of economic activity of occupations could be excluded.

ZENROREN: No.

Jordan. Federation of Chambers of Industry and Amman Chamber of Industry: (1) and (2) Yes.

Republic of Korea. (2) For instance, seafarers and port workers may not be included in the scope of activities of private employment agencies in accordance with national law or practice.

Malaysia. Not in the context of the developing countries.

Netherlands. Joint reply from the FNV, CNV and MHP: (1) Only if there are other equivalent means of protection of workers.

New Zealand. The only exception to the general framework in New Zealand is the legislation relating to seafarers.

NZEF: The recognition of a possible need for exclusions highlights the difficulties which would flow from a Convention of this nature.

Norway. (1) Reference should be made to the Placement of Seamen Convention, 1920, (No. 9). (2) This should be contained in the Recommendation.

LO: (2) Protection provided through national regulation.

Panama. (2) No, this would only arise if circumstances justified it — and it is not possible to predict this in advance.

Peru. Every Convention should have a measure of flexibility allowing the competent authority, after consultation with the most representative organizations of employers and workers, to exclude certain branches or occupations, so that all member States might ratify the instrument more easily.

Poland. Solidarnosc: Yes, with the proviso that possible exclusion would not cause any discrimination in access to labour market services.

Portugal. (2) The sectors of activity and occupations to be excluded could also be indicated after the presentation of the first report, which would give greater flexibility and facilitate the ratification of the Convention.

CCP: (1) The example of Convention No. 96 illustrates the dangers of exhaustive regulation in this sphere.

Slovakia. (1) The Convention should provide for the exclusion of some occupations in accordance with national legislation.

South Africa. BSA: Yes, given the diverse and changing nature of the industry, failing to have a mechanism for exemptions would reinstate the inflexibility and overregulation of Convention No. 96.

Spain. Yes, to ensure consistency with the previous question.

CEOE: As regards the exclusions contained in 6(1), mention might also be made of so-called "au pair" services, which are not strictly occupations which can be assimilated to dependent employment.

Sudan. (2) No, because the occupations excluded at a given time might be authorized later when the national market conditions change.

Sweden. (1) The exclusion of certain branches should be possible through a competent authority or by some other means determined by national law or practice.

Switzerland. (1) In respect for tripartism, the possibility of excluding certain categories might make the Convention more flexible, thus guaranteeing a better rate of ratification. The exclusions envisaged should be announced and the grounds given for them.

CSC/CNG: (2) Yes.

SVUTA-FSETT: (1) Convention No. 96 is an exemplary illustration of the dangers involved in overregulating this field of activity. (2) There should be an ongoing possibility to grant exemptions.

United Kingdom. Exclusions from the application of any of the objectives of the instrument should be matters for individual member States to arrange according to national needs and practices.

BIU: (1) If a particular job category has protection over and beyond what is proposed in this Convention, exemption should be considered. (2) Yes.

United States. (1) This would provide Members with needed flexibility. (2) As long as it is clear that Members may add to or otherwise change proposed exceptions over time. While it would be helpful to be appraised of proposed exceptions, it would be more helpful to allow any new Convention to remain relevant over time.

AFL-CIO-CLC: (1) Yes, if governments provide a good reason for excluding certain branches and the existence of other protection.

Zimbabwe. (1) Private employment agencies should cater for all categories of jobseekers and employers.

See the Office comments under question 5.

It should be noted that the Report of the Committee on Convention No. 9 (Placing of Seamen Convention, 1920) adopted by the International Labour Conference at its 84th (Maritime) Session (8-22 October 1996) included a resolution concerning the recruitment and placing of seafarers. The operative paragraph of this resolution invited the Governing Body of the International Labour Office "to instruct the

Director-General to bring to the attention of delegates to the 85th Session of the International Labour Conference, June 1997, the urgent need to maintain the exclusion of the placing of seafarers, taking into account the adoption by the 84th (Maritime) Session of the International Labour Conference of the Recruitment and Placement of Seafarers Convention, 1996."

IV. Questions concerning the proposed Convention

General provisions

- (1) *Should the Convention provide that a Member should:*
 - (a) *apply legal rules of general applicability to all types of services provided by private employment agencies; or*
 - (b) *have legal rules specifically applicable to certain types of services provided by them; or*
 - (c) *both (a) and (b)?*
- (2) *For each type of service mentioned in question 4 (a), should the legal rules take the form of:*
 - (a) *a licence (if so, please specify intervals for renewal)?*
 - (b) *a referral to internal rules or a code of ethics for the profession?*
 - (c) *a referral to an agreement between the competent authority and private employment agencies?*
 - (d) *other? Please specify.*
- (3) *Should the Convention provide that the competent authority could, after consultation with the most representative organizations of employers and workers concerned, prohibit the establishment or the functioning of a private employment agency in certain branches of economic activity or in respect of certain categories of persons, as defined by national legislation? If so, please specify.*

Qu. 7

Paragraph 1, subparagraph (a)

Total number of replies: 41.

Affirmative: 27. Austria, Bahamas, Bulgaria, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, El Salvador, Ghana, Republic of Korea, Lithuania, Mali, Mexico, Netherlands, Nicaragua, Norway, Oman, Portugal, Sierra Leone, Slovakia, Sweden, Switzerland, Thailand, United States.

Negative: 9. Argentina, China, Denmark, Finland, France, Germany, Japan, Malaysia, Poland.

Other: 5. Australia, Ireland, New Zealand, United Kingdom, Zimbabwe.

Paragraph 1, subparagraph (b)

Total number of replies: 36.

Affirmative: 23. Austria, Bahamas, Belgium, Congo, Czech Republic, El Salvador, France, Honduras, Japan, Lithuania, Malaysia, Mali, Mexico, Netherlands, Panama, Peru, Philippines, Portugal, Saudi Arabia, Spain, Sweden, Turkey, Zimbabwe.

Negative: 9. Argentina, Chile, China, Germany, Ghana, Oman, Poland, Sierra Leone, United States.

Other: 4. Australia, Finland, Ireland, New Zealand.

Paragraph 1, subparagraph (c)

Total number of replies: 34.

Affirmative: 29. Austria, Bahamas, Belgium, Canada, Chad, China, Congo, Costa Rica, Cyprus, Czech Republic, Ecuador, Estonia, Guyana, Hungary, Indonesia, Ireland, Japan, Jordan, Lithuania, Mauritius, Nicaragua, Netherlands, Poland, Qatar, Romania, Sudan, Sri Lanka, Sweden, Uruguay.

Negative: 4. Chile, France, Oman, United States.

Other: 1. New Zealand.

Paragraph 2, subparagraph (a)

Total number of replies: 56.

Affirmative: 40. Austria, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Congo, Costa Rica, Cyprus, Czech Republic, Estonia, Ethiopia, Guyana, Honduras, Hungary, Japan, Jordan, Republic of Korea, Malaysia, Mali, Mauritius, Nicaragua, Oman, Panama, Philippines, Poland, Qatar, Saudi Arabia, Sierra Leone, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United States, Uruguay, Zimbabwe.

Negative: 8. Australia, Denmark, France, Germany, Ghana, Lithuania, Netherlands, Norway.

Other: 8. Argentina, Canada, Indonesia, Ireland, Mexico, New Zealand, Portugal, Switzerland.

Paragraph 2, subparagraph (b)

Total number of replies: 40.

Affirmative: 22. Australia, Belgium, Chile, China, Costa Rica, Denmark, Estonia, Ethiopia, Guyana, Hungary, Indonesia, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Panama, Sierra Leone, Sri Lanka, Sweden, Thailand, United States.

Negative: 13. Austria, Colombia, Cyprus, Czech Republic, France, Germany, Ghana, Japan, Netherlands, Norway, Oman, Switzerland, Uruguay.

Other: 5. Argentina, Canada, Ireland, Mexico, New Zealand.

Paragraph 2, subparagraph (c)

Total number of replies: 43.

Affirmative: 23. Belgium, Chile, Cuba, Ecuador, El Salvador, Ethiopia, France, Ghana, Guyana, Hungary, Jordan, Lithuania, Mali, Mauritius, Nicaragua, Panama, Romania, Spain, Sri Lanka, Sweden, Switzerland, Thailand, United States.

Negative: 14. Australia, Austria, Colombia, Cyprus, Czech Republic, Denmark, Germany, Indonesia, Japan, Malaysia, Norway, Oman, Sierra Leone, Uruguay.

Other: 6. Argentina, Canada, Ireland, Mexico, Netherlands, New Zealand.

Paragraph 2, subparagraph (d)

Total number of replies: 12.

Affirmative: 6. China, Denmark, Ireland, Netherlands, Peru, Sierra Leone.

Negative: 5. Austria, Chile, Cyprus, France, Oman.

Other: 1. Canada.

Paragraph 3

Total number of replies: 58.

Affirmative: 40. Australia, Bahamas, Belgium, Bulgaria, Canada, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Ethiopia, Finland, Ghana, Guyana, Japan, Republic of Korea, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Panama, Philippines, Portugal, Qatar, Sierra Leone, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Uruguay, Zimbabwe.

Negative: 12. Colombia, France, Honduras, Hungary, Ireland, Norway, Oman, Peru, Poland, Romania, United Kingdom, United States.

Other: 6. Argentina, Austria, Costa Rica, Denmark, Germany, New Zealand.

Argentina. (questions 7-8) As regards the legal schemes which should be adopted, the instrument could allow each Member to adopt the scheme which is most appropriate to the development of the different types of employment agencies in its respective market.

CGT: (1)(c) Yes. (2)(d) The CGT believes that PREA should function under proper state control to prevent employers from making use of jobseekers as they feel fit. (3) Yes. Each particular case would have to be examined on its own merits.

Australia. (1) This should be left to the discretion of member States, subject to the market imperfections they are attempting to resolve by the body of the legal rules. More developed labour markets would not need any regulation, whereas less developed labour markets might require a mix of both. The Government suggests that the introductory paragraph should be qualified by the words "as necessary".

ACCI: A Convention should only provide that a Member applies to private employment agencies the same rules that apply to other businesses in their general commercial capacity, and as employers.

Austria. (2)(a) Provision should be made for a licence (but no deadline) for certain types of services. (2)(b) A referral of this nature is unnecessary. (2)(c) This would be unnecessary in cases where a licence was required. (3) Generally speaking, the workers' organizations concerned should be consulted before a private employment agency is established.

VOI: (1)(a) In principle, legal rules should be applied. (2)(b) VOI prefers clause (b), in other words referral to a code of ethics. (3) The competent authority should not be able to ban the establishment or functioning of a private employment agency.

Bahamas. (2)(a) Annually. (3) Yes, if in their opinion the services anticipated contravene the regulations and code of practice.

Belgium. (1)(a) The Convention should stipulate that every Member should: (a) apply legal rules of general applicability to all or certain types of services provided by private employment agencies and/or (b) have legal rules specifically applicable to all or certain types of services provided by these agencies.

Brazil. CNC: (questions 7-20) Could be included in a Recommendation.

CNI: (1)(a) Yes. (1)(b) No. Excessive regulation should be avoided. Governments should be free to regulate private employment agencies. (2) No. (3) No.

CNA: (1)(b) Yes. (2)(c) Yes. (3) No.

Bulgaria. (2)(a) For a term of one year.

Canada. (2)(a)-(d) The Convention should flexibly provide for all of these and other possibilities as options to take account of the diversity in approaches among member States.

Chad. (2)(a) A licence renewed every year.

Chile. (2)(a) On an annual basis.

China. (2)(d) Supervision and guidance. (3) It would be decided according to the national conditions.

Congo. (2)(a) The Government feels that the legal rules applying to these types of services should take the form of a licence or of a permit. In the case of a licence, the interval for renewal could be every two years.

Costa Rica. (2)(a) It is appropriate to adopt biannual licences as well as rules.

Côte d'Ivoire. (3) Categories of persons excluded could include: those who do not enjoy civil rights; those sentenced to prison for crime and offences against honour or integrity; those gainfully employed in a public administration.

UGTCI: (1)(a) There should only be recourse to national law and practice if this is efficient. (3) Agencies recruiting workers in a country to work in another country should be subject to strict regulations.

Cyprus. (2)(a) A licence renewable every two years. (3) The competent authority could prohibit the functioning of private employment agencies in respect of certain categories of persons — such as persons under the age of 18 years.

Czech Republic. (2)(a) A licence to be renewed annually.

The Confederation of Art and Culture (CMK OS) and the Confederation of Unions of Employers and Entrepreneurs of the Czech Republic (KPZS CR): This provision could be covered by granting licences — in so far as the authorities could decide whether or not to renew

them depending upon the case. The legislation could prohibit the establishment or functioning of agencies in certain branches or in respect of certain workers.

Denmark. (2)(b) The Convention should contain a principle providing that private agencies involved in placement activities should draw up a "code of ethics" for their activities. (2)(c) There is no need for an agreement between the competent authority and the private employment agencies. (2)(d) The Convention should be confined to laying down general guidelines and principles; any more detailed regulation should be left to the member States. (3) On the basis of the equality principle that all citizens should be treated alike, the reply to this question must, as a starting-point, be in the negative. If such a provision would be helpful for other countries, Denmark would be willing to accept a provision as proposed.

DA: (2) All of these approaches have proved to be effective instruments in the regulation of employment agencies. With respect to "other", collective agreements have also proved themselves to be effective in the past.

LO, AC and FTF: (2) There seems to be no reason to exclude any of the regulatory instruments. In fact, it could be appropriate to adapt regulations in this area to conditions in individual countries.

Estonia. (2)(a) Yes, provided that this was renewed annually.

Ethiopia. (2)(a) The interval for renewal could be six months up to one year. (3) For example, employment of persons outside their country and employment of foreigners within a country should be conducted by public employment services.

Finland. (1)(a) No, as the Convention would otherwise be too broad which would result in problems in its specific application. (b) The Convention should include rules specifically applicable to certain types of services provided by private operators. (2)(d) The Convention should lay down general guidelines and principles; legal specifics could be set forth in further detail in national legislation on employment services.

TT and LTK: (1)(a) The Convention should apply only to employment agencies proper, as specified in paragraph 7(1)(a). (2)(b) Yes. (3) Neither the Convention nor national legislation should prohibit the establishment of any private employment agency.

SAK, STTK and AKAVA: (1)(c) Yes. (2)(a) Various alternatives and combinations thereof should be allowed, depending on the conditions in the country concerned. There should be a licensing system for agencies exporting/importing migrant labour; such licences should be valid for a specified period and terminated in the event of any abuse.

France. CFDT: (1)(c) Provision should be made for legal rules of both general and specific applicability. (3) Agencies recruiting workers in one country to work in another country should be strictly regulated.

Germany. (1)-(2) The Convention should establish only minimum provisions respecting the activity of private employment agencies. The details should be left to national law. These minimum provisions should include the existence of a supervisory body to monitor the activity of private intermediaries; it should also be able to prohibit private intermediaries from exercising their activity in the case of illegal placement. Furthermore, Members which are signatories should be free to decide whether to apply legal rules of general applicability to all types of services provided by private employment agencies [(1)(a)], or to have legal rules specifically applicable to certain types of services provided by them [(1)(b)]. In the same way, Members which are signatories should be free to decide the form [(2)(a)-(c)] in which the services are to be regulated at national level.

DGB: (1) There should be specific rules for private employment agencies which must be supplemented by legal rules of general applicability. (2) The authorization should be bound up with qualitative criteria, such as technical qualification, official supervision, a ban on general job placement and leasing, a ban on exclusive contracts with jobseekers and enterprises, statistical bookkeeping, etc. Referral to internal rules or a code of ethics for the profession is inadequate. (3) Yes. This is particularly true in the case of cross-border placement agencies, which should be subject to special authorization — or even be banned, as the case may be.

Ghana. (3) Private employment agencies should not operate in such areas as recruiting for the armed forces or paramilitary organizations.

Guyana. (2)(a) Annually. (3) Yes — all those who have special conditions applicable to them, e.g. seafarers, port workers, artists or high-level professional staff.

Honduras. (2)(a) For each type of service mentioned and for all services in general, there should be a system contingent upon a licence renewable at regular intervals. (3) These agencies should be allowed freedom of choice with respect to the branch of activity or area of the labour market they wish to enter or cover; the more freedom they are allowed, the greater will be their efficient contribution to the solution of problems hampering development.

Hungary. (2) The legal rules should take the form of clauses (a)-(c); this is adequate.

Indonesia. (2)(a) In Indonesia a permanent licence is required.

Ireland. (1)(c) The competent authorities should be free to arrange national legislation to suit the domestic situation and the roles played by the different employment agencies. (2) The Government would support a range of options so that the competent authority could regulate the market according to domestic circumstances.

Japan. (2)(a) Services as defined in 4(a)(i) and (ii) should take the form of a licence, with the provision that, subject to a strict condition to be established by legislation, some of the services might be subject to notification. The intervals for renewal should be left to the judgement of each Member. Services as stated in 4(a)(iii) should be covered in the Recommendation. (3) This is complementary to the licensing system of 7(2)(a). Consultation with employers and workers should be applied not only to this issue but also to the whole system of regulation of this Convention.

NIKKEIREN: (1)(a) Yes. (2)(b) The Federation prefers referral to internal rules or a code of ethics, provided that these would be determined autonomously by the business circles concerned.

Jordan. Amman Chamber of Industry: (1)(a), (b) Yes. (2)(a) Yes, a licence is vital.

Federation of Chambers of Commerce: (1)(a), (b), (c) Yes. (2)(a) Yes, annually. (2)(b), (c) No. (3) No.

Republic of Korea. (2)(a) In particular, fee-charging agencies and temporary work services should be made to operate under a licence granted by the competent authority, renewable every three years. The competent authority should legislate on rules and strictly inspect and supervise these agencies. (3) The Convention should also prohibit certain categories of persons (i.e. persons under age or persons considered incompetent) from establishing or engaging in private employment agencies.

Lithuania. (3) Yes, if these agencies infringe the law.

Malaysia. (2)(a) Yearly renewal. (2)(b) On a collaborative basis.

Mali. (2)(a) The legal rules should take the form of a licence without a specified period of time; it should, however, carry an obligation to submit regular data (annual) on operations carried out. (b) They could also take the form of internal rules which could serve as a code of ethics. (c) Notwithstanding all the above-mentioned considerations, specific conditions established on a contractual basis between private employment agencies and the competent authority could also be envisaged. (3) Without being exhaustive, these sectors could be those considered "strategic" for the national economy or para-military activities; as far as certain categories of persons are concerned, conditions with respect to nationality, age or legal capacity could be established.

Mauritius. (2)(a) To be renewed every two years.

Mexico. (1)(b) Yes, for certain cases such as: the veracity in advertising and the keeping of a register of statistics. (2) As the view is that the operation of private agencies should be restricted, only specifically applicable legal rules should be adopted as far as labour market mediation is concerned. (2)(a), (b), (c) are aspects for which provision should be made in national legislation.

Netherlands. (2)(a) The Netherlands Government considers it highly undesirable that a licensing system should become obligatory for every ratifying Member. It would be preferable and more efficient if any infringements of legal rules committed by private employment agencies were tackled by the parties harmed by these infringements by means of private law. (2)(c) An agreement between the competent authority and private employment agencies is in principle feasible. (2)(d) A set of legal rules should prescribe exactly the kind of conduct required in specific situations.

VNO-NCW: (2)(a)-(d) Yes, but only if a ratifying Member would not be obliged to follow a specific system.

FNV, CNV, MHP: (2) The Convention should leave it up to the Members to opt for a licensing system, or any other efficient legal means, as long as these provide for binding rules. This could also apply to rules in a collective agreement — provided that it is of general application.

Nicaragua. (2)(a) To be renewed every year, but left up to the competent authority. (2)(b) Referral to internal rules for the profession. (3) Yes, in the case of placement or recruitment of foreigners abroad.

Norway. LO: (1)(b), (c) Yes. (2)(a) National regulation. (3) Yes, through tripartite arrangements.

Panama. (3) Yes. The Convention should stipulate that the competent authority might prohibit the establishment or functioning of a private employment agency in certain branches of activity, for instance in the case of the recruitment of nationals for jobs abroad.

Peru. (2)(d) The legal rules should be based on each member State's regulations governing enterprises hiring workers to place them at the disposal of user enterprises. (3) No, on account of the principle of freedom of private initiative enshrined in the Constitution of Peru.

Philippines. (3) Yes, restricted to skilled workers only.

Poland. (2)(a) A licence renewed every year.

OPZZ: (1)(a) Yes. (2)(a) Three years.

Solidarnosc: (2)(a) As regards 4(a)(i) and 4(a)(ii), the legal rules should take the form of a licence. The first licence should be valid for a one-year period. The next should be renewed every two years. (2)(c) Applicable to point 4(a)(iii). (3) Yes. The Convention should establish a general rule that "private employment agencies" functioning on the labour market should not affect the employment rights of regular workers. It could also specify hazardous occupations, overseas employment and migrant workers' employment.

Portugal. (2)(a) For each type of service provided by employment agencies, the rules should take the form of prior authorization.

CCP: (1)(a)-(c), (2)(a)-(d) All these aspects are part of the regulations and collective agreements in many countries. Countries themselves should decide. (3) There should be no restrictions on the functioning of temporary employment enterprises.

Qatar. (1) These agencies should be subjected to legal rules of general applicability as well as to legal rules specifically regulating their activities. (2)(a) The rules should take the form of a licence renewed every two years. (3) Yes, categories of persons such as artists, sportspersons, high-level professional staff and others determined by the national authority, in accordance with conditions prevailing in the country.

Saudi Arabia. (2)(a) Yes, annually.

Sierra Leone. (2)(d) An annual statistical return from the agency.

Slovakia. (1)(a) The respective national legal regulations should apply legal rules to all types of services provided by these agencies. (2)(a) The activity of such agencies is possible only on the basis of a licence issued by the respective authority.

South Africa: BSA: 1(c) Yes. (2) BSA favours self-regulation. (3) No.

Spain. (2)(c) Yes, so as to leave open the possibility of establishing conditions through an agreement between the employment agency and the competent authority within the framework

pre-established by the regulating standards. (3) Although the provision contained in question 6 could be sufficient, the Government none the less feels that this could extend to "activities with specific risks".

UGT: (1)(a) The Convention should provide that the Members adopt legal rules specifically applicable to agencies as well as public supervisory machinery – consisting of a register and a procedure to grant licences or administrative permits.

Sri Lanka. (2)(a) Renewal period — one year. (3) Yes. For better control.

Sudan. (2)(a) A licence renewed annually.

Sweden. All the proposed methods may be appropriate but need not preclude others. The method or methods to be used in the individual member States should be decided by those States themselves, in the manner anticipated in question 20.

Switzerland. (1)(a) The Convention could provide that legal rules of general applicability should apply, in so far as they are adequate to guarantee the lawful rights of workers and employers; if not, specifically applicable rules should be envisaged — especially in cases when the activity of these agencies is outside the scope of national legislation (placement from or to a foreign country, for example). (2)(a) The activity of agencies in the meaning of paragraph 4(a) should be subject to authorization. (2)(b) Referral to internal rules or a code of ethics for the profession does not, in the Government's opinion, constitute a sufficient guarantee.

CSC/CNG: (1)(a) Yes. (b) No. (2)(a)-(d) The Confederation prefers that they take the form of a licence. (3) Yes.

SVUTA-FSETT: (1) and (2) All of the approaches mentioned have proved to be effective instruments in the regulation of employment agencies. As regards "other", collective agreements have also been effective in the past.

Thailand. (2)(a) Two years.

Turkey. (1)(b) It should be possible for a ratifying State to apply specific rules to certain types of services provided. (3) Yes, rural workers, and migrant workers.

TISK: (1)(a) The Confederation prefers choice (a). In every country legal rules of general applicability should be applied. (2)(a) A licence valid for three years. (3) Except for cases of immorality or abuse of any kind, TISK would not admit the prohibition of certain branches of economic activity or certain categories of persons from availing themselves of these service opportunities.

United Kingdom. (1) and (2) The instrument should not provide that any member State should apply rules in any specific or general way. The instrument should simply ensure that national governments are free to determine how objectives should be met. (3) This ignores the conclusions of the Committee at the 81st Session of the Conference. Those conclusions clearly state that an instrument should "establish general principles and provide guidance".

BIU: (1)(a)-(c) Yes. There will be many instances when the rules can be applied to various services. However, there will be instances where specific rules will be necessary. The aim should be to have general applicability to minimize misunderstanding. (2)(a) No. (2)(b), (c) Yes.

United States. PREA should be treated as any other general business organizations. (2)(a) Yes, if this is the practice of the Member to allow general business organizations to operate within their jurisdictions. (2)(b) Yes, if this is the practice of the Member with respect to the treatment of specific-purpose business entities. (2)(c) Only if this would expedite the creation of such entities. (3) This is a matter best left to the discretion of the individual Members.

USCIB: (1)(a)-(c) No. The Convention should not require that Members apply "legal rules" in any case. In whatever form a Member chooses to give effect to the standards of a new Convention, that effort should be applicable solely to the services directly related to labour market intervention. (2) Yes. The Convention should permit any of these forms. (3) No. All jobseekers should have the opportunity to avail themselves of all actors in the labour market including PREA, in order to maximize their chances of gaining employment.

AFL-CIO-CLC: (1)(c) Yes. (2)(a) Annual licence. (3) Yes. The recruiting of workers in one country for work in another country should be strictly regulated.

Uruguay. (2)(a) Annual renewal. (3) Yes. It would depend upon the national situation. Workers' sector: (2)(a) Yes. Biannual. (2)(d) By establishing regulations.

Zimbabwe. (1)(a) General rules are difficult to apply. (2)(a) The legal rules should take the form of a licence. The licence should be renewed after an interval of 12 months. (3) The Convention should provide for the prohibition by the competent authority of certain services by private employment agencies e.g. the recruitment of expatriates.

This question prompted more comments than any other in the questionnaire. The analysis of the replies only partially reflects the variety and depth of the observations as most member States did not specify which legal rules would apply to each of the three types of services mentioned in question 4(a). This resulted in inconsistencies in the replies and made the analysis more difficult.

The comments made in relation to this question bore witness to considerable differences in national law and practice. As very few of the replies referred to the type of services listed in question 4(a), as requested under question 7, it was difficult to determine which form the legal rules could take. The breakdown of the replies reflects this uncertainty. Most of the replies from governments and employers' organizations felt that the legal status should be determined at national level, thus taking into account the specific conditions of the labour markets concerned. The vast majority of workers' organizations were, however, in favour of a stricter international framework and wanted to see agencies subject to previous authorization.

Three common principles emerged from the replies:

- (a) the governments should allow private employment agencies to operate in such a way that their legal status is clear and unequivocal — thus implying that a situation in which the public employment service has a monopoly would be incompatible with the new Convention;
- (b) the governments should take measures to ensure that these agencies operate within the framework of national law and practice;
- (c) the social partners should be involved in initiatives to improve certain practices of and prevent abuses committed by private employment agencies.

In view of the need to adapt legal systems to the specific conditions and services of agencies, Article 3 of the proposed Convention is of a general nature. The version drafted by the Office leaves it up to the national authorities to determine the legal status of private employment agencies.

The comments on paragraph 3 of this question have been taken up under question 5.

Should the Convention provide that it does not affect more favourable provisions applicable to workers under other international labour Conventions?

Qu. 8

Total number of replies: 64.

Affirmative: 57. Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Jordan, Republic of Korea, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Panama, Peru, Philippines, Poland, Portugal, Romania, Qatar, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 2. Colombia, Switzerland.

Other: 5. Argentina, Costa Rica, Japan, Kuwait, New Zealand.

Argentina. UIA: The Convention on private employment agencies is an autonomous instrument and thus this provision should not be established.

CGT: Yes, in accordance with the fundamental labour law principle of *in dubio pro operario*.

Brazil. CNI and CNA: Yes.

Costa Rica. More favourable standards or conditions in labour legislation should apply to protect workers' rights.

Denmark. DA: In principle, yes. DA would however strongly warn against the new Convention addressing issues already addressed by other Conventions.

Finland. TT and LTK: The employers' organizations consider the reference to international Conventions in question 8 as irrelevant, since such Conventions confer workers' rights only if they are ratified.

Germany. BDA: Such a truism should not in our view be specifically included in the Convention.

Honduras. In its legislation, Honduras applies the principle of *in dubio pro operario*, whereby if a choice has to be made between two legal standards which regulate the same situation, the one most favourable to the worker applies.

Hungary. The exclusion of the application of the more favourable provisions of another Convention is not justified at all.

Japan. NIKKEIREN: The content and standards of the revised Convention should not refer to what has been covered by other ILO Conventions.

JTUC-RENGO and ZENROREN: Agree.

Kuwait. As regards questions 7 to 20, the Government is in favour of the adoption of a Recommendation.

Mexico. Yes, not only as regards other international Conventions, but also as far as national legislation is concerned.

Peru. Despite the fact that the Constitution provides in article 26, paragraph 2, that workers' recognized rights shall not be waived, consideration should be given to this point.

Portugal. CIP: Yes. However, the CIP does not believe that this principle should be adopted in a way which would mean that specific provisions would not be applied if there were compensations in other respects.

South Africa. BSA: No, it could perpetuate possible inflexibilities existing in other countries.

Spain. CEOE: No. There are other international Conventions which also need revision — and for the same reasons as those applicable to Convention No. 96.

UGT: The Convention should respect more favourable provisions adopted previously or later.

Switzerland. It does not seem obvious to the Government why provision should be made for such a reservation.

CSC/CNG: Yes.

SVUTA-FSETT: In principle: Yes. In this context, a clear distinction should, however, be drawn between Convention No. 96 and the ILO discussions on contract labour.

VSA: Yes

Turkey. TISK: Yes, the Convention to regulate this area should develop a functional and healthy structure and introduce new principles, rather than adopting a practice favouring one or other of the parties.

United States. If there is consensus on other international labour Conventions that contain more favourable provisions applicable to workers, there is no reason to thwart those provisions.

USCIB: The Convention should avoid duplication and the confusion to which duplication leads. Therefore, it should not treat issues that are already subject to adequate provisions in other Conventions.

A very large majority of the replies were in favour of the provisions covered by this question. Most of the employers' organizations disagreed. The Office complied with the opinion of the majority by including this provision in Article 12 in the text of the proposed Convention.

Protection of workers

Should the Convention provide that the competent authority should ensure that private employment agencies do not charge, directly or indirectly, in whole or in part, any fees or costs to workers for placement services?

Qu. 9

Total number of replies: 66.

Affirmative: 45. Argentina, Australia, Bahamas, Belgium, Bulgaria, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Germany, Ghana, Hungary, Ireland, Japan, Lithuania, Mali, Mexico, Netherlands, Nicaragua, Norway, Oman, Panama, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Slovakia, Sudan, Sweden, Turkey, United Kingdom, United States, Uruguay.

Negative: 16. China, Estonia, Guyana, Honduras, Indonesia, Jordan, Lebanon, Malaysia, Mauritius, Peru, Poland, Singapore, Spain, Sri Lanka, Switzerland, Zimbabwe.

Other: 5. Austria, Canada, Denmark, Republic of Korea, New Zealand.

Argentina. UIA: This could form part of the Recommendation.

CGT: The competent authority should ensure that private employment agencies operate only in return for a monthly fee from employers or the State and do not obtain their earnings from the wages received by the workers.

Australia. Disadvantaged and even ordinary workers should not be charged by PREAs for basic placement services. However, the variation between workers, from the highly qualified and sought-after specialist to the labourer in a developing nation, makes a universal response to this question difficult.

ACCI: The Convention should allow for exemptions for this in specific and limited circumstances. For example, exemption may be granted for high-level services to professional staff, or for the use of specialized training services.

Austria. This question concerns only placement in the strict sense of the term as defined under question 4(a)(i). It does not concern the making available of workers covered under question 4(a)(ii), which is concerned with whether or not workers should be paid when they cannot be recruited — i.e. when the agency has no work to propose them. In the case of services (training, information, etc.) specified under question 4(a)(iii) any provisions on the breakdown of costs must be weighed carefully and take account of the reasons for the training or information and the body providing these services; they should also consider in whose interest this training or information lies.

VOI: The Association finds it totally acceptable, as a matter of principle, that the agencies should be compensated and that once a worker has been placed, he or she should pay for this service; however, it would not under any circumstances like to see unscrupulous brokers profiting from the difficulties of unemployed workers to exploit them.

BAK: The non-payment of the service by jobseekers is one of the principal guidelines for the exercise of this activity.

Belgium. Yes, and this applies both to the services described under question 4(a)(i) and 4(a)(ii).

Wallon Region: The services under question 4(a)(iii), on the other hand, are extremely different because workers are not usually under any obligation to accept these in connection with a job offer. Furthermore, this category incorporates such a heterogeneous range of services and situations that a flexible solution would seem more advisable.

Brazil. CNI and CNC: Yes.

Canada. The new instrument should be sufficiently flexible in this regard, e.g. fees might be permitted, provided that the jobseeker is given full information as to what services he/she is receiving, what the agency is required to do on his/her behalf and the precise fee structure.

Côte d'Ivoire. UGTCI: The revised Convention should contain this provision and the only exceptions to this principle should be services provided to high-level and professional staff, such as access to computerized data banks providing information on job vacancies.

Czech Republic. A number of employers disagree.

Denmark. DA: Yes, but with the possibility of exemptions for, e.g. high-level professional staff, special training facilities, etc.

LO and AC: Yes.

FTF: Normally, undertakings engaged in private employment agency services should not collect any fees or the like from workers, but there may be special situations where it would be natural to do so.

Finland. TT and LTK: The concept of "placement services" in question 9 should refer only to basic employment services. Special related services, such as testing, career planning and special recruitment procedures, are supplementary services for which a fee should readily be charged.

Germany. Exceptions may be made for artists and professional sportspersons. At the international level, it has always been the practice in such occupational groups for the placement fees to be borne by the worker.

DGB: This basic provision must be contained in the instrument, if only to guarantee a minimum of protection to workers.

Indonesia. Employment agencies should be allowed to charge a fee of maximum one month's wage/salary.

Ireland. The Government would support the principle that the agency should be prohibited from charging fees merely for agreeing to seek employment for another person or solely for agreeing to seek persons who will give or accept employment.

Japan. This should be applied to the services stated in 4(a)(i) and (ii).

NIKKEIREN: No. Furthermore, the revised Convention should provide that private employment agencies might decide their fees for user enterprises.

Jordan. Federation of Chambers of Commerce and Industry: Yes.

Amman Chamber of Industry: Yes.

Republic of Korea. In accordance with the labour market circumstances in each member State, the prospective employers or jobseekers may bear the cost for employment services provided by private employment agencies.

Lebanon. The State might establish a tax that employment agencies are paid for placement services.

Malaysia. No, but they should charge a reasonable market rate.

Mauritius. This clause should be more flexible and left to prevailing national law and practice.

Netherlands. VNO-NCW: In general yes, but there must be the possibility of exemptions for, e.g. high-level professional staff, special training facilities, etc.

New Zealand. NZEF: Fees in New Zealand are normally charged to employers.

Panama. Yes. As this would avoid jobseekers from being exploited.

Peru. The competent authority should not intervene in these aspects, since the principle inherent in freedom of contract should be safeguarded.

Poland. APTUA and Solidarnosc: Yes.

Portugal. The CIP does not agree since it believes that the exercise of activities would normally be for profit.

Singapore. Flexibility should be allowed to enable workers to pay for a good job-matching service. However, payment for such services should be reasonable and commensurate with the remuneration of the job successfully placed and the level of service given.

South Africa. BSA: Yes, but with the possibility of exemptions.

Spain. No, but guaranteeing that the remuneration which employment agencies may receive from a worker should be limited exclusively to expenses arising out of the services provided.

CEOE: The general principle should be the prohibition to charge, directly or indirectly, any fees to the workers. However, each national legislation should determine the necessary exceptions to this principle.

UGT: Given the measures proposed under questions 9 to 14, the following factors should be taken into account: commitments must comply with the provisions contained in the licence issued by the administrative authority; the public offices, where the register is deposited, must be authorized to receive any complaints from workers or trade unions concerning abuses or shortcomings in application; it should be made compulsory that a guarantee or security be deposited with the public authority to cover any possible debts as regards wages, social security or social benefits; the Members should provide for specific measures to guarantee wage discrimination between workers in the user enterprise and workers made available by the agency, especially when they are carrying out the same work. The UGT considers particularly relevant the double guarantee of freedom of association.

Sri Lanka. It should provide that only legally stipulated fees can be charged.

Sweden. The choice of method for achieving this result should be left for national decision.

Switzerland. An entirely free service for workers would carry a number of risks for agencies. Free services are rather a matter for the public employment agencies.

CSC/CNG: Yes.

SVUTA-FSETT: Yes, but with the possibility of granting exemptions, e.g. for highly qualified experts.

VSA: Yes

Turkey. Yes, for categories to be determined by the ratifying member States.

United Kingdom. CBI: Yes, unless they work as agents for artists, sportspersons, etc.

United States. With the stipulation that this should receive more attention. While a number of Members and nations that have not ratified the current Convention specify that private employment agencies may not directly or indirectly charge fees or costs to workers for placement services, it should be acknowledged that the rapid evolution of PREA and growing complementarity between PREA and PES might warrant revisiting this preclusion. If the Members are not comfortable with reconsidering existing preclusions, the Government would suggest "No" might be a better response, with the resolution left to the discretion of the individual Members.

USCIB: In general, yes.

AFL-CIO-CLC: Yes. The Federation strongly supports retaining this principle in the revised Convention, except for services provided to high-level professionals and executives and for certain services such as access to computer data banks containing information about vacancies.

Zimbabwe. A fee should be charged to the workers for placement services rendered by private employment agencies. This could be 5 per cent of the worker's first monthly salary. Fees for services rendered by private employment agencies should be regulated by the competent authority.

Most of the replies agreed that workers should be protected with respect to agency fees. However, a significant minority of governments expressed reservations about a global ban on private employment agencies charging fees to workers. The workers' organizations felt that this free service was a basic principle. A number of employers' organizations could agree with such a principle, provided that exemptions could be made for specific cases. The employers concurred on this point with the governments, especially with respect to the supply of direct services.

The Office proposes, in Article 6 of the Convention, to maintain the principle of free services for workers. It also suggests envisaging the possibility of exceptions, but only if this is in the interest of the workers concerned.

- Qu. 10** (1) *Should the Convention provide that the competent authority should take measures to ensure that workers are being treated without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin by private employment agencies, in order to promote equality of opportunity and treatment in access to employment and occupations? Please specify these measures.*

- (2) *Should the Convention include other cases of discrimination for which there should be protection? Which ones?*

Paragraph 1

Total number of replies: 67.

Affirmative: 56. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Hungary, Indonesia, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Panama, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Singapore, Slovakia, Spain, Sudan, Sweden, Thailand, Turkey, United States, Uruguay, Zimbabwe.

Negative: 7. Côte d'Ivoire, Germany, Honduras, Japan, Norway, Peru, United Kingdom.

Other: 4. Ireland, New Zealand, Sri Lanka, Switzerland.

Paragraph 2

Total number of replies: 50.

Affirmative: 28. Bahamas, Belgium, Canada, Chad, Congo, Costa Rica, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France, Guyana, Honduras, Lebanon, Malaysia, Mali, Mauritius, Mexico, Netherlands, Panama, Sierra Leone, Slovakia, Spain, Sweden, Zimbabwe.

Negative: 18. Austria, Bulgaria, Chile, China, Colombia, Cyprus, Ghana, Hungary, Japan, Jordan, Oman, Peru, Poland, Qatar, Romania, Sudan, Turkey, United States.

Other: 4. Indonesia, New Zealand, United Kingdom, Uruguay.

Argentina. UIA: The measures which could be adopted by the competent authority for this purpose should not form part of the Convention but of the Recommendation and could consist of penalties meted out to agencies which engage in discriminatory practices (warnings, fines, etc.). The Convention should not include grounds of discrimination other than those mentioned.

CGT: Agencies should offer equal opportunities and it is the competent authority which should ensure that this is the case. The only requirement which can be imposed upon a worker concerns his or her suitability for a given post.

Australia. Specific measures need not be identified in the Convention. To allow for the variations which occur in the types of discrimination prohibited by member States, the wording of this provision should be consistent with Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

ACCI: Discrimination concerns should more appropriately be addressed in national laws which have general application throughout the community.

Austria. (1) Equality of opportunity should also be included in the Convention; to guarantee this, States having ratified the Convention should be provided with corresponding measures of supervision (for example, right to consult the list of clients). (2) There is no need to

list other cases of discrimination because in some cases private employment agencies only operate in certain market segments or niches.

Belgium. (2) Discrimination for belonging to a workers' organization; philosophical convictions; age; moral standards; language community.

Wallon Region: Apart from the measures laid down by the provisions in these instruments, the revised Convention should also contain those listed under question 24.

Brazil. CNI: (1) Yes. (2) No.

CNA: (1) Yes. (2) Yes.

Canada. (1) Measures could include encouraging relevant associations to incorporate the principles of equality in professional codes of conduct and reminding associations of provisions contained in human rights legislation. (2) The Convention should include other cases of discrimination which might be provided for in national legislation and practice, e.g. sexual orientation.

Chad. (2) Protection of migrant workers against exploitation in their host country.

China. Measures to ensure the quality and contents of service.

Congo. These measures should include access to information, the concluding of labour contracts and the open organization of selection tests.

Costa Rica. (2) The instrument should establish that there is real equality between men and women in every area of employment — and any type of "blacklist" should be banned.

Côte d'Ivoire. UGTCI: (2) Discrimination in employment and discrimination based on age should also be included in the revised Convention.

Cyprus. The measures could be legal as well as administrative and aim at establishing a system which would provide jobseekers with the opportunity of bringing their case before a body or the competent authority for examination and remedial action if necessary.

Czech Republic. (2) Access to employment; health conditions.

CMK OS: Infringements of anti-discrimination measures should result in penalties/fines or the withdrawal of licences.

Denmark. (2) It is proposed that discrimination due to age is included in the Convention.

DA: (2) Temporary workers should be subject to the same national laws on discrimination as permanent workers.

Estonia. It could be mentioned, but it would not be necessary to list measures.

Ethiopia. (2) Discrimination due to physical appearance — some organizations prefer someone who is not disabled even if the disabled can do better work.

Finland. Discrimination bans in national legislation need not apply separately to private employment agencies. (2) Age.

France. (1) Private employment agencies should respect all provisions which apply to public placement services. (2) Age or trade union membership.

Germany. The instances of discrimination should not be specifically listed in the Convention and should be regulated by national legislation. Measures to combat discrimination could include: a warning, with a fine, in the case of repeated or serious offences, and prohibition of placement activity.

BDA: Provision should be made for supervision and control, so that no special kind of discrimination arises which is already prohibited under national law for all types of activities. The measures for ensuring such supervision could include, in accordance with national practice, fines, penalties, withdrawal of licences.

DGB: There should be specific provisions to prevent discrimination. Grievance mechanisms should be introduced and information provided on these. There should be some sort of protection against discrimination on account of trade union membership and trade union activities. This also applies to protection of pregnant women workers.

Ghana. The agency would certainly have to be registered and should accept respective regulations and supervision in order to promote equality of opportunity and treatment of workers in access to employment and occupations. In the event of these regulations being infringed, the authority should withhold or withdraw a licence to operate.

Guyana. (1) Yes — legal. (2) Yes — age.

Honduras. (2) Yes. When carrying out research on employment agencies and most user enterprises, the Government noted a particularly marked problem which is spreading; widespread discrimination based on age which affects both sexes.

Indonesia. (2) Positive discrimination could be allowed in specific cases to protect certain groups of people.

Ireland. (1) The Government feels that national legislation should cope with these requirements.

Japan. (1) Other Conventions, such as No. 111, already deal with this subject and any provision in the Convention would cause duplication. It could be included in the Recommendation.

JTUC-RENGO: (1) Agree.

ZENROREN: (1) Agree. (2) Age; workers with family responsibilities; different forms of employment such as part-time workers, fixed-term contract employees, dispatched temporary workers.

Jordan. Amman Chamber of Industry: (2) Discrimination against severely handicapped and poor families.

Lebanon. (2) Disabled persons.

Malaysia. (1) Yes — first-come first-serve basis; matching skills/qualifications with appropriate vacancies; free choice and mobility of labour. (2) Yes, e.g. discrimination against wearing of *sarban* (turban) and *hijab* by Muslims.

Mali. (1) These measures could be included in an appropriate article contained in the agreement or any other document establishing a contract between the competent authority and private employment agencies. Labour inspectors would be entrusted with supervising strict adherence to measures drawn up to this effect. (2) Trade union membership.

Mauritius. (2) Marital status.

Mexico. (2) Age, state of health, family responsibilities.

Netherlands. (1) Discrimination by private employment agencies is already forbidden in the Netherlands under generally applicable legislation. (2) Netherlands anti-discrimination legislation also combats discrimination on the basis of sexual orientation.

VNO-NCW: (1) The Convention should provide that employees/workers of PREAs should be protected in every respect, as mentioned in questions 10, 11 and 12, in the same way as employees/workers in general. The Federation is against specific protective rules and regulations for PREA employees/workers.

FNV, CNV and MHP: (2) Age.

New Zealand. (1) Anti-discrimination measures should apply universally. (2) See General observations and question 1.

Nicaragua. (1) As regards measures to be taken, the bans under 24(i) and (ii) are basic. Provision should also be made for appropriate penalties and the withdrawal of the licence or legal permit.

Norway. (1) National regulation.

Panama. (2) The Convention should provide for measures to protect against discrimination of the disabled.

Peru. (1) No, since equal treatment and non-discrimination are rights that are now protected both by international and national law.

Poland. OPZZ: (2) Education.

Portugal. CCP: (1) Yes. Temporary workers, as well as permanent workers, should be protected from discrimination. (2) Temporary workers should be included in national discussions on discrimination against permanent workers.

Qatar. (1) Yes, by making these agencies subject to the control of the authorities concerned which would be authorized to check their registers and activities to guarantee non-discrimination in employment.

Sierra Leone. (1) These measures should include withdrawal of licence and judicial actions. (2) These should include disabled job applicants.

Singapore. (1) The measures could take the form of licensing conditions.

South Africa. BSA: Yes. Other cases of discrimination that could be included are sexual orientation, age, disability, conscience, belief, culture, language, marital status and family responsibility.

Spain. Yes, with control by the Ministry of Labour. Anti-discrimination measures could include: the obligation of employment agencies to provide information on job applications and offers to the competent authority; classification as a very serious offence the establishment of conditions which constitute discrimination in access to employment; the measures indicated in question 24. (2) Yes. Other cases of discrimination in respect of which protection should be provided are: age, civil status, trade union affiliation, social status and language.

Sudan. (1) Through licensing and the supervision of their work in order to ascertain that they respect the local laws which guarantee equality and non-discrimination.

Sweden. (1) The Convention should make clear that all employment agencies must treat jobseekers and employees without discrimination — but the choice of methods to achieve this result should be left for national decision. (2) Age.

Switzerland. (1) The principle of non-discrimination is universal. However, this does not mean that specialized agencies should be excluded, at least as regards occupations. This matter could be dealt with in the Recommendation. Indeed, Switzerland might find it difficult to implement this provision which contains wide protection for workers in the area of access to employment.

CSC/CNG: (1) Yes. (2) No.

SVUTA-FSETT: (1) Yes. (2) The same national anti-discrimination regulations should apply to temporary workers (auxiliary staff) as to permanent employees.

VSA: (1) The State must act to guarantee equality of opportunity and treatment in access to employment.

Turkey. (1) Yes and the measures to be taken should be left to the ratifying States.

United Kingdom. (1) The instrument should confine itself to setting objectives based on principles specific to employment agencies. Such should be left to the international and national provisions which already apply across the board. (2) Disabled people.

BIU: (1) Yes. Perhaps the Convention can establish a code of equal employment opportunity and begin an affirmative action programme. In Bermuda, there is the problem of locals being unemployed, while non-Bermudians are taking jobs. (2) Physical/mental condition of the jobseeker, such as discrimination against HIV-infected persons; age.

United States. (1) Protection from discrimination in order to promote equality of opportunity and treatment in access to employment and occupations should be a basic part of this Convention. (2) Given the multinational character of the proposed Convention, and the difficulty in moving beyond the basic protection mentioned in question 10(1), it is perhaps best to leave protection that extends beyond that basic charter to individual Members.

USCIB: (1) Non-discrimination standards should be incorporated into the Convention by reference to already existing Conventions that are specifically addressed to this issue. (2) There are no forms of discrimination that are unique to PREA activities.

AFL-CIO-CLC: (1) Employers are asking TWAs to avoid both legal and collectively bargained obligations. Extreme examples include the use of private employment agencies as a

cover for racial discrimination in recruitment and the use of TWAs to supply strike breakers. (2) Handicapped.

Uruguay. (1) Yes. There should be regulations on the form job offers should take to avoid discrimination and the use of technical selection methods should be made compulsory.

Zimbabwe. (1) Yes. Measures for the protection of workers against discrimination should include the inspection of registration and placement records of private employment agencies. The agencies should also submit statistics on registration and placement to the public authority. (2) The Convention should include other cases of discrimination such as the discrimination of jobseekers with disabilities and the charging of fees to jobseekers to register for employment.

The large majority of governments, backed by the workers' organizations, acknowledged that certain practices specific to private agencies could result in discrimination. They wanted the principle of non-discrimination to be included as a key component for the protection of workers. The Office proposes to include this principle in Article 4 of the proposed Convention.

Although the employers' organizations appreciated the principle of non-discrimination, they maintained that regulations on equality of treatment should take account of national conditions. It should be noted that in many of the replies received, other cases of discrimination were put forward. On the basis of these replies, the Office has added, in Article 4, a provision against discrimination on the basis of age. It has also retained a specific provision on this subject in the proposed text for the Recommendation (Paragraph 6).

Should the Convention provide that a Member should specify the respective responsibilities of private employment agencies and the user enterprises with regard to the following subjects:

Qu. 11

- (a) *freedom of association?*
- (b) *training?*
- (c) *working time and other working conditions?*
- (d) *health and safety at work?*
- (e) *compensation in case of occupational accident or disease?*
- (f) *coverage by collective agreements?*
- (g) *safeguards in respect of the protection of workers' claims?*
- (h) *others? (Please specify.)*

Subparagraph (a)

Total number of replies: 57.

Affirmative: 33. Argentina, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Indonesia, Republic of Korea, Lebanon, Lithuania, Malaysia,

Mali, Nicaragua, Panama, Philippines, Portugal, Romania, Sierra Leone, Spain, Uruguay.

Negative: 17. Australia, Austria, Colombia, Denmark, Germany, Ireland, Japan, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Sri Lanka, Turkey, United Kingdom.

Other: 7. Czech Republic, New Zealand, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (b)

Total number of replies: 57.

Affirmative: 32. Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Indonesia, Lithuania, Lebanon, Malaysia, Nicaragua, Panama, Philippines, Portugal, Romania, Sierra Leone, Spain, Uruguay.

Negative: 18. Australia, Austria, Colombia, Denmark, Germany, Ireland, Japan, Republic of Korea, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Sri Lanka, Turkey, United Kingdom.

Other: 7. Czech Republic, New Zealand, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (c)

Total number of replies: 60.

Affirmative: 35. Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Ecuador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Indonesia, Jordan, Lebanon, Lithuania, Malaysia, Nicaragua, Panama, Philippines, Portugal, Romania, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Uruguay.

Negative: 16. Australia, Austria, Colombia, Denmark, Germany, Ireland, Republic of Korea, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Turkey, United Kingdom.

Other: 9. Czech Republic, Japan, New Zealand, Oman, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (d)

Total number of replies: 58.

Affirmative: 33. Argentina, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Jordan, Lebanon, Lithuania, Malaysia, Nicaragua, Panama,

Philippines, Portugal, Romania, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Uruguay.

Negative: 16. Australia, Austria, Colombia, Denmark, Germany, Ireland, Republic of Korea, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Turkey, United Kingdom.

Other: 9. Czech Republic, Indonesia, Japan, New Zealand, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (e)

Total number of replies: 55.

Affirmative: 31. Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Lebanon, Lithuania, Malaysia, Nicaragua, Panama, Philippines, Portugal, Romania, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Uruguay.

Negative: 16. Australia, Austria, Colombia, Denmark, Germany, Ireland, Republic of Korea, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Turkey, United Kingdom.

Other: 8. Czech Republic, Japan, New Zealand, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (f)

Total number of replies: 55.

Affirmative: 30. Argentina, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Lebanon, Lithuania, Malaysia, Nicaragua, Panama, Philippines, Portugal, Romania, Sierra Leone, Spain, Uruguay.

Negative: 18. Australia, Austria, Colombia, Denmark, Germany, Ireland, Japan, Republic of Korea, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Sri Lanka, Turkey, United Kingdom.

Other: 7. Czech Republic, New Zealand, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (g)

Total number of replies: 57.

Affirmative: 33. Argentina, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Congo, Costa Rica, Cuba, Cyprus, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Jordan, Lebanon, Lithuania, Malaysia, Mali, Nicaragua, Panama, Philippines, Portugal, Romania, Sierra Leone, Spain, Sri Lanka, Uruguay.

Negative: 17. Australia, Austria, Colombia, Denmark, Germany, Ireland, Japan, Republic of Korea, Mauritius, Mexico, Netherlands, Norway, Peru, Poland, Qatar, Turkey, United Kingdom.

Other: 7. Czech Republic, New Zealand, Sudan, Sweden, Switzerland, United States, Zimbabwe.

Subparagraph (h)

Total number of replies: 14.

Affirmative: 4. Ghana, Republic of Korea, Lebanon, Sri Lanka.

Negative: 5. France, Ireland, Netherlands, Poland, United Kingdom.

Other: 5. Côte d'Ivoire, Cuba, Finland, Sudan, Zimbabwe.

Argentina. (questions 11 to 14) The Convention should provide for the establishment of the respective responsibilities of private agencies and user enterprises as regards freedom of association, the coverage of collective agreements, occupational safety and health, safeguards in respect of the protection of workers' claims, as well as other aspects concerning conditions of employment. There should be protection of workers' personal data to prevent any abuse in their use. Appropriate corrective measures should be established for infringements, with the application of sufficiently dissuasive penalties.

UIA: Each Member should establish the respective responsibilities of private employment agencies both as regards the cases mentioned and others; this task should be the responsibility of each Member and not appear as a specific point in the Convention. The provision could form part of the contents of the Recommendation.

CGT: (a)-(g) Yes. The Convention should provide for the joint and several responsibility of the employment agency and the user enterprise vis-à-vis the worker and measures to take in the event of the agency or enterprise failing to meet their respective obligations. The temporary work agency should be assimilated to the employer proper.

Australia. These matters should be regulated by omnibus regulation applicable to all employment relationships and not be limited to those involving private employment agencies.

Austria. (a) This is not strictly necessary, because legal rules of general and specific applicability should apply to all services of private employment agencies. This question only applies to services involving a user enterprise and therefore the issue of making workers available in case of strikes in that enterprise seems relevant.

Brazil. CNI and CNA: (a)-(g): Yes.

Canada. (a)-(h) Yes, provided that the term "specify the specific responsibilities" is broad enough to encompass private employment agencies being subject to generally applicable labour laws and practices in these areas.

Chile. (a)-(g) These items have been written into Chilean labour law. The Government believes that an agency's role should be limited to acting as a labour market intermediary, although it should pass on all of the information and guidance received from the competent authority.

Congo. Yes, because it is necessary to prevent and combat the retrograde aspects of the legal subcontracting of labour.

Costa Rica. The Convention should provide for penalties against any private agencies who fail to comply with any work-related or trade union rights, etc.

Côte d'Ivoire. The Convention should provide that a Member must establish the responsibilities of private employment agencies in regard to working conditions, particularly concerning the recruitment of workers abroad and placement.

UGTCI: (a)-(g) Yes. (h) The Convention should guarantee the claims of temporary workers in the event of insolvency, in the same way that employees' claims are guaranteed in the user enterprise. The revised Convention should contain provisions specifying that private employment agencies should not, under any pretext, use temporary workers to act as strike breakers or encourage racial discrimination in recruitment.

Cuba. (h) Compensation in the event of dismissal.

Czech Republic. For a Recommendation. These responsibilities would only concern a private agency in the event that workers were the direct employees of the agency. User enterprises should have the same responsibilities as private agencies.

Denmark. Private employment agencies and user enterprises are in Denmark subject to the same rules as other enterprises.

DA: The extent to which member States should specify responsibilities should be left to the respective national government to decide.

LO and AC: (a)-(g) Yes, but taking national conditions into consideration, since private employment services must not result in any deterioration of wages and conditions of employment.

FTF: In principle the answer is yes, subject to the conditions in each country. The premise must be that private employment agencies should not result in a deterioration of pay and employment conditions compared with normal employment under collective agreements.

Finland. SAK, STTK and AKAVA: (a) The Confederations emphasize that any labour legislation currently in force should be binding on the employer, irrespective of the specific form of employment.

France. CFDT: (a) Specific measures should be taken to protect this right. (b) It should be required of the user enterprise that temporary workers be included in training programmes. (c) For this point, as well as the following points, the rights and protection of temporary workers should be the same as those for other workers in the enterprise.

Germany. All the responsibilities listed in this question refer to subjects which are not specific to labour placement.

DGB: (a)-(g) Yes. There must be a guarantee that employment agencies abide by the national social and labour legislation and take account of existing collective agreements. It is also necessary to have specific regulations for leasing enterprises, thus ensuring that the role of the employer in this "three-cornered relationship" is clearly and comprehensively defined so that people working for these agencies are not disadvantaged. It must also be made perfectly clear that it is strictly forbidden to place or lease strike breakers.

Ghana. (h) Social security coverage.

Honduras. The new Convention should contain provisions to the effect that each Member should adopt, in national legislation, a definition of this type of responsibility so that the protection of workers is specified.

Indonesia. (d) Health and safety at work are covered in collective agreements.

Ireland. The Government does not agree to the inclusion of all clauses. National legislation should cope with these requirements as it is easier to update and modernize. A Convention is not the place for these matters.

Japan. JTUC-RENGO and ZENROREN: The Confederations agree to all the provisions of this question. (c) The Convention should provide working conditions for dispatched temporary workers, ensuring them equal treatment at client companies.

Jordan. Federation of Chambers of Commerce and Industry: (a), (b), (c), (f) Yes.

Republic of Korea. The Convention should provide that TWAS and the user enterprise each have their separate responsibilities.

Lebanon. If private employment agencies exist, the Government feels that the areas covered by the clauses in this question should be regulated according to the legal rules of general and specific applicability pertaining to these areas.

Mauritius. This is not necessary as the issues concern the user enterprise directly.

Netherlands. These issues should be covered by generally applicable laws.

FNV, CNV, MHP: (a)-(g) Yes. The Convention should require Members to specify the respective responsibilities. They should provide for both entitlements of the workers and legal clarity on the attribution of responsibilities regarding the granting of these requirements. Moreover, TWA workers should be entitled to the same rights as employees in the user enterprise — irrespective of whether the TWA or user enterprise is held responsible and liable — as regards (c), (e) and (g). With respect to (b), this may require the user enterprise to include TWA workers in government-sponsored training schemes. Concerning (h), the Convention should explicitly require a ban on PREAs replacing workers participating in a lawful strike.

Norway. National regulation.

LO: (a)-(g) Yes. This must also be seen in relation to the proposed Convention on contract labour, in which TWAs should be regulated.

Oman. (c) This is unnecessary.

Peru. No, since all the rights referred to are protected in Peru's legal system, both by the Constitution and by labour and social security provisions; furthermore, adequate machinery to defend these rights exists in the event of their infringement.

Poland. OPZZ and Solidarnosc: (a)-(g) Yes.

Qatar. The Government feels that the responsibilities of agencies should be restricted to the recruitment of workers and the provision of auxiliary services (in the area of training, for example), provided that these services are basic and do not require specific skills.

South Africa. BSA: Yes in respect of (c), (d) and (f).

Spain. Yes as regards all items, in accordance with the idea of assimilating the working conditions of contract workers to those of permanent employees.

Sri Lanka. (a), (b) Unnecessary. However, where training is compulsory it could be specified. (h) Transportation of mortal remains in the case of death; unjustified termination.

Sudan. Private agencies will be active in the field of employment abroad. According to the national laws in force, the competent authority certifies all employment contracts and consequently verifies working and security conditions of contract workers, taking into account the laws in force in the receiving countries.

Sweden. It could be desirable for clauses (a)-(g) to apply to private employment agencies; however, in Sweden at present, no such demands are made on employment agencies, whether public or private. None the less, in view of the limited applications which this provision apparently has — namely that the Members are to specify the respective responsibilities of the different players for basic rights and liberties — Sweden could probably ratify a Convention to this effect.

Switzerland. The new Convention should concentrate on "placement contracts" and provide adequate protection in this area. The leasing of services should be dealt with by the instrument on contract labour. Swiss labour legislation stipulates that the temporary work agency is the main employer of the worker and that it must respect the legal obligations incumbent on it.

CSC/CNG: Yes. (h) Social security; ban on the recruitment of temporary workers to replace strikers; ways to extend the scope of the binding nature of collective labour agreements.

SVUTA-FSETT: (a)-(g) Yes.

VSA: (a)-(g) Yes.

Turkey. (a)-(g) No, because employed persons are covered by labour law.

TISK: The issue of training should be considered in the light of requirements of user enterprises.

Confederation of Turkish Trade Unions (TÜRK-İS): (a)-(g) Yes.

United Kingdom. (a)-(h) No. See question 10.

CBI: (a)-(g) Yes.

BIU: (a)-(g) Yes.

United States. Perhaps. The subjects listed in (a) through (g) (e.g. training, health and safety at work, compensation in case of occupational accident or disease) are handled by a number of national and state laws in the United States, which would render such a Convention provision either redundant or moot. However, other national experiences might demonstrate such a variety of circumstances that requesting specificity on coverage of these matters from Members would better serve Members, workers and jobseekers.

USCIB: No. Each Member should, in the light of its own labour market situation, unilaterally determine which subjects require specification of responsibility and how, whether by legislation, collective bargaining agreement or otherwise, responsibilities are to be specified.

AFL-CIO-CLC: (a)-(g) Yes.

This question prompted a large number of negative replies and observations from governments and employers' organizations. However, a majority wanted to see the revised Convention take into account the risks inherent in triangular relationships.

The majority of workers' organizations felt that the Convention should go beyond the establishment of respective responsibilities and should also specify the nature of this responsibility and measures to take to guarantee this right. In particular, they drew attention to the fact that the codes of conduct of reputable temporary work agencies prohibited these agencies from supplying workers to enterprises where strikes were taking place (see also question 22).

In line with the majority of replies, the Offices proposes that the allocation of the responsibility for the specific aspects of triangular relationships should be incorporated in the Convention. Article 9 accordingly summarizes the protection of workers in the case of agencies providing skills.

- (1) *Should the Convention provide that the competent authority should take measures to ensure that all processing of personal data of workers, including the collection, storage, combination, communication or any other use which could be made of these data by private employment agencies, is done in accordance with national laws and regulations concerning the protection of personal data?*
- (2) *Should the Convention provide that, in the absence of national laws and regulations on the subject, specific measures should be taken to protect against abuse in regard to personal data of workers? Please specify these measures.*

Qu. 12

Paragraph 1

Total number of replies: 58.

Affirmative: 52. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, New Zealand, Nicaragua, Oman, Panama, Poland, Portugal, Qatar, Saudi Arabia, Sierra Leone, Singapore, Spain, Switzerland, United States, Uruguay, Zimbabwe.

Negative: 5. Ireland, Japan, Norway, Peru, United Kingdom.

Other: 1. Côte d'Ivoire.

Paragraph 2

Total number of replies: 56.

Affirmative: 44. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Ghana, Guyana, Honduras, Hungary, Jordan, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Panama, Portugal, Romania, Sierra Leone, Spain, Sri Lanka, Sudan, Turkey, Uruguay, Zimbabwe.

Negative: 8. Germany, Japan, Norway, Peru, Poland, Sweden, United States, United Kingdom.

Other: 4. Finland, France, Ireland, Qatar.

Argentina. UIA: It is not necessary for the Convention to include such provisions, particularly as regards the application of already existing national legislation respecting the protection of personal data.

CGT: (1) The data on workers should be kept in computerized systems which are protected and supervised by the competent authority. Although the functioning of the labour market must be efficient, extreme care should be taken in the handling of information and the transfer of personal data on employees. (2) The proposed Convention should provide that countries which adopt the instrument should establish, within a prescribed time, standards to regulate activities which do not contradict those established by the Convention.

Australia. The specific measures to be taken should be included in the Recommendation and could be modelled on the forthcoming ILO Code of practice on the protection of workers' personal data.

ACCI: (2) No.

Belgium. (2) In the absence of national legislation on the protection of workers' personal data, the Convention should provide for the liability (criminal and/or civil) of the private employment agency or those accountable to it for any abuse in regard to specified data.

Wallon Region: (2) Regulations should be adopted, which are based on the following principles: notification of any processing of personal data; compliance of this data processing with the stated objective; restricted access to data; safeguarding in the storage and handling of data; information to the person concerned of the existence, contents and objective of the data; and right of the person concerned to have access to the data and to amend, rectify, complete or delete data which are inexact, incomplete or superfluous.

Brazil. CNI and CNA: (1) and (2): Yes.

Canada. (2) There should be some protection to ensure that personal data which has been submitted for employment purposes is not misused or distributed to other sources, such as telemarketers.

Chile. (2) Measures addressed by common law.

Congo. (2) Yes, these specific measures should primarily aim to protect against interference into private life and attempts to undermine philosophical opinions or religious beliefs; they should also protect against any other discrimination in the light of national conditions.

Costa Rica. The information contained in job application contains data of a personal nature; it is for this reason that it should be regulated and not used for purposes other than that required by the actual placement agency.

Côte d'Ivoire. (1) The Government has no specific observations to make in so far as the labour legislation in Côte d'Ivoire does not contain any provision concerning the protection of workers' personal data, including the collection, storage, combination, communication or any other use. (2) Measures to guarantee the discretion and security of workers' personal data and prevent exploitation of this data.

Cuba. (2) Yes, there should be a ban on providing any sort of data which has nothing to do with the actual placement.

Cyprus. (2) Administrative measures, including conditions imposed on the agencies through the licensing procedure.

Czech Republic. (1) The Convention should specify the obligation to ensure the protection of personal data against abuse, as well as the corresponding duty of the agencies; it should also provide for the competent authority to apply severe penalties (fines, withdrawal of licence) in the event of abuse. (2) In the absence of legislation, the measures listed in 12 (1) should be spelt out in individual regulations when the agencies are granted the right to operate.

Denmark. (1) National law concerning protection of personal data should also apply to private employment agencies.

Finland. (2) In the absence of national laws, it may prove necessary to provide for specific measures to protect workers' personal data. It could be stipulated, for example, that the use of personal data be permissible only for a specifically stated purpose, beyond which any other use of data would constitute an offence.

Germany. Data protection is a particularly sensitive sphere in labour placement and regulation of this issue is especially important. However, data protection should not be limited only to data of workers but should include enterprise data, the secrecy of which is of special importance to the employer.

BDA: The protection of personal data must be guaranteed, as is the case in all other spheres. There is therefore no need for specific regulations.

DGB: It is important to have minimum requirements on data protection in order to counteract any abuse. The collection of data on trade union membership, strike participation, pregnancy and illnesses, etc., should be prevented.

Ghana. (2) A code of practice.

Guyana. (2) To be determined by the competent authority.

Honduras. A system should be set up whereby legal standards would be created to regulate and protect the information compiled by private employment agencies; these agencies should also be monitored to ensure that the agencies only use this information to provide workers with a job and that, if they close down, this information is handed over to the competent authority.

Hungary. (1) The Government regards it as necessary to prescribe the application of national rules of law related to the protection of personal data or, in the lack of such rules of law, the prescription of suitable, concrete measures.

Ireland. (1) Legislation in this area is not specific to employment agencies. (2) Only in the absence of adequate national legislation. National legislation should be dominant.

Japan. (2) This should take the form of a Recommendation. Each Member should ensure that, regarding personal data, protective measures be taken.

NIKKEIREN: (1) The instrument should only point out the importance of the protection of personal data; measures to secure this should be left to each Member in view of the variety of measures.

JTUC-RENGO and ZENROREN: (1) Agree.

Jordan. Federation of Chambers of Commerce and Industry: (2) Yes, there should be a text in national legislation.

Lebanon. (1) The Government feels that the secrecy of workers' personal information and data should be protected, in accordance with the legislation in force. In the absence of such laws, specific measures could be taken, such as the drafting of a code of conduct or a code of honour imposing the respect of secrecy of personal information — or, as the case may be, the adoption of necessary legal rules. In the event of complaints, recourse to the courts remains an option.

Malaysia. (2) Data and storage should be classified as confidential. Data should be systematically disposed of after a period of time.

Mali. (2) Measures envisaged might be based on the protection of professional secrecy.

Mauritius. (2) The authority issuing recruitment licences should include such provisions in the licences.

Mexico. (1) The Convention should prohibit any other use being made of the data mentioned, its being circulated in any way which may lead to discrimination or, its being transmitted to third parties without the knowledge and express approval of the worker involved. (2) The provisions of clause (1) should be formulated in such a way that they should be automatically applied even in countries where there is no specific legislation on data protection — thus providing protection for the workers concerned.

Netherlands. Private employment agencies should treat the personal details of workers and jobseekers in accordance with the rules on protection of privacy.

FNV, CNV, MHP: (2) The Convention should require the measure mentioned under question 24 (ii).

New Zealand. New Zealand agrees that national laws and regulations concerning the protection of personal data should apply to private employment agencies as they do to all organizations.

Nicaragua. (2) Yes. These should take the form of appropriate penalties and a withdrawal of the licence or legal permit.

Norway. (1) National regulation.

LO: (2) Yes.

Oman. (2) Withdrawal of the licence or permit.

Panama. (1) The Convention should guarantee the confidentiality of personal data communicated to employment agencies. (2) Any State ratifying the Convention should also adopt the necessary measures to protect the personal data of workers and, especially, ensure that these data do not give grounds for abuse against those concerned.

Peru. No, since this protection is laid down in the Constitution, including the collection, storage, combination, communication or any other use which could be made of these data by private employment agencies, through the action of *habeas data*.

Qatar. (2) The Government feels that these measures should be determined by the legislation regulating the agencies' activities.

Romania. (2) In the absence of national legislation on the subject, protection of workers' personal data should be guaranteed by contractual clauses.

Sierra Leone. (2) These measures should take the form of criminal prosecution and withdrawal of licence.

South Africa. BSA: (questions 12-14) No. The same principles governing any other business enterprise should govern PREAs.

Spain. (2) Yes. In the absence of any national legislation on the protection of personal data, the Convention should stipulate that Members should provide for penalties if workers' personal data are used for purposes other than those strictly related to those of the employment agency — or if they are communicated or made available in unauthorized cases.

CEOE: (1) and (2). Yes, the Convention should contain these provisions, but not only as regards data of workers but of enterprises.

Sudan. (2) The personal data of workers should be stored with the authority — i.e. the Labour Department.

Sweden. The Convention should stipulate that provisions pertaining to the privacy of employees and jobseekers also apply to private employment agencies; however, it should be left up to the member States to decide upon these provisions.

Switzerland. The Convention should stipulate that, in the absence of specific legal provisions at national level, measures could be taken with a view to protecting workers' personal data.

CSC/CNG: (2) Yes; for example, the communication of the addresses of unemployed workers.

SVUTA-FSETT: (1) The issue concerns all employment relationships and not solely those involving employment agencies.

Turkey. TISK: (2) TISK believes that the establishment of specific measures beyond and in excess of the provisions of the national legislation for the protection of personal data would not be necessary.

United Kingdom. (2) Each member State must be free to devise measures appropriate to its own legal system and state of technology.

BIU: (1) and (2) Yes.

United States. (1) The language suggested here would afford protection, respect national nuances, and accommodate technological developments. (2) With the issue having been raised in question 12 (1), a better approach would be a convocation of officials to deliberate on matters relating to individual privacy in a technological age.

USCIB: (2) The Convention should encourage Members to take appropriate measures but should not do so itself. This is an exceedingly complex area, with significant commercial, technological and political ramifications. The Convention should not attempt to define a special set of measures solely in the context of PREA.

AFL-CIO-CLC: (2) Yes. Changes in information technology have raised a number of serious and complex problems with respect to protecting the privacy of workers. The Convention should address this subject.

Uruguay. (2) Measures should be taken to ensure that data which is not relevant to the selection of candidates should not be registered.

Workers' sector: It should be prohibited to process the personal data of jobseekers which refer to their private life, trade union activities, etc. The controls of the public authority should be very strict in this respect.

Zimbabwe. (1) The Convention should stipulate that the personal data of jobseekers should be confidential and that the competent authority should take measures to ensure this. (2) Specific measures could include a code of ethics drawn up by the member State concerned.

A large majority of governments believed that the personal data of workers should be protected. The workers' organizations were of the opinion that the secrecy of workers' information and personal data, as well as the exclusive use of this data for well-defined purposes, should be vital components of a new Convention. A number of replies referred to the Office's activities in this area, such as the draft code of practice on the protection of workers' personal data. However, it should be recalled that the draft instrument had to be finalized before the Governing Body met to consider the conclusions of the Meeting of Experts on Workers' Privacy (Geneva, 1-7 October 1996).

After examining the replies in depth, the Office opted to retain the principle of the protection of workers' personal data in Article 5 of the proposed Convention. The definition of the term "processing of personal data of workers" is contained in Article 1. The Office proposes to supplement the provisions of the Convention by Paragraph 7 of the Recommendation.

Qu. 13 *Should the Convention provide that a Member should put in place appropriate mechanisms and procedures in order to examine, where necessary, complaints against activities of private employment agencies?*

Total number of replies: 64.

Affirmative: 54. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Germany, Ghana, Guyana, Honduras, Hungary, Indonesia, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Panama, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Singapore, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United States, Uruguay.

Negative: 7. Denmark, Ireland, Japan, Netherlands, New Zealand, Poland, United Kingdom.

Other: 3. Finland, Peru, Zimbabwe.

Argentina. UIA: The appropriate mechanisms and procedures for the examination of complaints against the activities of private employment agencies are those normally in place in each member State and there is no need for the Convention to establish regulations in this respect.

CGT: (questions 13-14) Mechanisms and procedures should be put in place for the examination of complaints against activities carried out by private employment agencies and penalties established for infringements.

Australia. The flexibility provided by this proposal is appropriate. However, the wording of the provision should acknowledge that the member State may already have some relevant mechanisms in place.

ACCI: Complaints should only lie against agencies in their trading or employment activities. A complainant should have a potential ground for action either in laws of general commercial application or in laws of specific employment application.

Belgium. Wallon Region: In this respect, the state judicial bodies — especially those specialized in labour relations — seem the most appropriate to receive, look into and judge this type of complaint. It might also be envisaged to set up conciliation bodies made up of employment professionals from the public and private services; these bodies could be instructed to act before or under the supervision of the judicial bodies, in the role of ombudsman.

Brazil. CNI and CNA: Yes.

Chile. In Chile, it is now mandatory to act in accordance with the provisions of common law or of the Training and Employment Act, respectively.

Costa Rica. Appropriate mechanisms and procedures should be set up to deal with complaints against activities of private employment agencies — such as a national employment services committee, etc.

Denmark. General provisions concerning the inspection of complaints against business enterprises should also apply to private employment agencies. There is no need to enact separate provisions on the inspection of private employment agencies.

Finland. General provisions concerning the inspection of complaints against business enterprises should also apply to private employment agencies.

Germany. The Convention should prescribe that workers with complaints about private employment agencies may have recourse to the supervisory authority and that an appropriate procedure be established, in the case of complaints found to be valid, for action to be taken by the supervisory authority vis-à-vis the private placement agency.

DGB: Yes. At the same time, effective penalties should be foreseen in the event of infringements of national regulations in force.

Honduras. The competent authority should check, by means of a specific administrative procedure, that the agency is operating well and fulfilling its particular objectives before granting it a permit — or renewing its permit; in this way it might define the respective responsibilities and any other immediate and direct penalties to be applied as the case may be.

Ireland. No, but the governing associations should be encouraged to adopt codes of conduct which incorporate a complaints procedure.

Japan. This should take the form of a Recommendation in order to enable each Member to respond in a flexible manner.

JTUC-RENGO and ZENROREN: Agree.

Republic of Korea. In order to promote the adequate functioning of the labour market and the job security of workers, the competent authority should, at all times, inspect and supervise the activities of private employment agencies. If the private employment agencies commit an abuse, it should be up to the competent authority to take corrective measures. As a result, each Member should put in place appropriate mechanisms and procedures in order to examine complaints against activities of private employment agencies.

Lebanon. The Government feels that the application of legal rules applicable to private employment agencies — when these exist — should be ensured by means of labour inspection.

Mali. The Convention could stipulate that the labour inspectorate would be entrusted with receiving and examining complaints against the activities of private employment agencies and ensuring compliance of these agencies with the legal rules.

Netherlands. Complaints against actions by private employment agencies should be dealt with under the normally applicable rules of civil legal procedures law. It is of course desirable

that the sector organization for private employment agencies itself sets up a complaints scheme to supplement the professional code.

New Zealand. New Zealand believes that such complaints should be dealt with under the same laws and regulations which apply to complaints against other business.

Norway. NHO: No.

LO: Yes where appropriate.

Peru. These agencies should be subject to the control mechanisms applicable to enterprises in general with respect to their compliance with the regulations in force.

Poland. OPZZ and Solidarnosc: Yes.

Portugal. The definition of such measures should include participation by the representatives of the workers and the employers.

CAP: (questions 13-14) Temporary employment agencies should be subject to the same laws as other employers as regards complaints, inspections and penalties.

Switzerland. SVUTA-FSETT: (questions 13-14) TWAs should be subject to the same legislation as other employers in respect of complaints, inspection and penalties.

United Kingdom. There should be no departure from the principle that member States should be free to determine how objectives are met.

BIU: Yes.

United States. Without the power to investigate and act upon complaints, a Member has little recourse, other than licensing, to ensure proper corporate behaviour.

USCIB: No. In the case of most Members special mechanisms and procedures are not necessary.

Zimbabwe. The mechanism and procedures to examine complaints against private employment agencies should be in the form of legislation.

A very large majority of replies approved the provision concerning mechanisms and procedures to examine complaints. The Office retained this in Article 8 of the proposed text for the Convention.

- Qu. 14**
- (1) *Should the Convention provide that the effective application of legal rules applicable to private employment agencies should be ensured by means of labour inspection?*
 - (2) *Should the Convention provide that adequate remedies, including penalties, should be provided for in case of infringements of the legal rules and effectively applied?*

Paragraph 1

Total number of replies: 67.

Affirmative: 51. Argentina, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Indonesia, Jordan, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Panama, Philippines, Portugal, Qatar, Romania, Saudi Arabia,

Sierra Leone, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Thailand, Turkey, Uruguay, Zimbabwe.

Negative: 10. Austria, Hungary, Japan, Netherlands, New Zealand, Norway, Peru, Poland, United Kingdom, United States.

Other: 6. Australia, Canada, Czech Republic, Ireland, Republic of Korea, Switzerland.

Paragraph 2

Total number of replies: 62.

Affirmative: 55. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guyana, Honduras, Indonesia, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Oman, Panama, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Thailand, Turkey, United States, Uruguay, Zimbabwe.

Negative: 5. Netherlands, New Zealand, Norway, Sweden, United Kingdom.

Other: 2. Ireland, Peru.

Argentina. UIA: The labour inspection services should comply with the obligations established by the specific legislation in force in each Member country, without it being necessary for the Convention to establish that such services monitor compliance with the legal scheme governing agencies or establish appropriate corrective measures in the event of infringements of legislation.

Australia. (1) The types of legal rules instituted would determine appropriate compliance measures. The proposed Convention should not be too descriptive.

ACCI: Any inspectorial function should be restricted to the employment agencies as employers of labour with labour inspectors applying legal rules to agencies only so far as they inspect and provide for the observance of legal rules by other employers.

Austria. (1) No, because the main role of the labour inspection services is to protect workers and not to ensure that private employment agencies apply the legal rules. (2) Yes, especially those linked to the granting of permits and administrative penalties for unauthorized placement.

Brazil. CNI: (1) Yes. (2) No.

CNA: (1) and (2) Yes.

Bulgaria. Yes, in the case of Bulgaria — the National Employment Office.

Canada. Add after "labour inspection", "or other means consistent with national conditions and practice".

China. (2) Yes, but the measures should not be detailed.

Congo. (2) Yes, as this is inseparable from supervision of the application of the law, entrusted to the labour inspection services.

Costa Rica. (1) There should be some sort of appropriate follow-up in addition to licenses and regulations: this could take the form of official and regular inspections carried out by the competent authorities such as the labour inspectorate. (2) It is vital that the set of standards sets

the scope of action of private employment agencies; in the case of infringement of the legal rules, there should be provision for corresponding penalties.

Côte d'Ivoire. UGTCL: Labour inspection services do not adequately serve workers' interests. The Convention should stipulate that national law and practice should govern relations between the employers' and workers' organizations and the labour administration.

Czech Republic. Supervision should be ensured by the competent state authorities, which should penalize any infringements of the rules by withdrawing licences. Nevertheless, this provision only specifies the principle mentioned in question 13; it should therefore perhaps be included in a Recommendation.

CMK OS: The most suitable means could be a body of the labour inspection services.

KUK: This should be the same body that issues the licence — i.e. not a body of the labour inspection services.

Denmark. Yes, but the provisions should only apply in member States which have an institutionalized public labour inspection system.

DA: TWAs should be subject to the same laws on complaints, inspections and penalties as other employers.

LO, AC and FTF: This should be carried out in compliance with national legislation and practice.

Germany. (1) Yes. However, Members which are signatories should be free to determine at the national level which institutions should carry out these activities.

Hungary. This task may not be transferred to labour inspection services as their function is to monitor the observance of rules governing the employment relationship.

Ireland. Not specifically, as employment agencies should be subjected to the same rules as other employers.

Japan. (1) As provided in the Labour Inspection Convention, 1947 (No. 81), the role of labour inspection services is to ensure compliance with regulations regarding working conditions and the protection of workers at work; this Convention, however, aims at regulating or supervising employment services provided by private employment agencies. (2) Should be provided regarding the services as defined in 4 (a) (i) and (ii).

ZENROREN: Yes.

Republic of Korea. (1) The most desirable method for effectively applying legal rules to the private employment agencies would be to have the competent authority supervise the activities of the agencies.

Mauritius. Yes, but not through labour inspection. There should be a mechanism set up by the competent authority to check whether private employment agencies are complying with the law. Labour inspection, as defined in article 3 of the Labour Inspection Convention, 1947 (No. 81), is meant for a different purpose.

Netherlands. FNV, CNV, MHP: (2) Yes, it being understood that the legal rules may be enforced by the general procedural means provided for under the national legal system.

New Zealand. New Zealand believes that the normal means of enforcement of laws and regulations in each country should apply to private employment agencies as to any other business.

Norway. (1) and (2) National regulation.

LO: (1) and (2) Yes.

Panama. (1) The Convention should not only provide that any ratifying member State has a labour inspection service which ensures the effective application of legal rules applicable to private employment agencies — but should make this compulsory, especially to avoid abuse.

Peru. Considering that private employment agencies act as an intermediary between jobseekers and user enterprises, and in view of the fact that inspection services verify

compliance with the provisions of labour legislation and collective agreements, the Government considers that such a provision should not be included in the Convention.

Poland. OPZZ and Solidarnosc: Yes.

Sweden. The Convention should provide that, where necessary, there should be effective methods of supervision — but that the framing of these methods should be left for national decision.

Switzerland. This provision would create problems in Switzerland. The federal and cantonal labour inspection services do not have the competence to monitor whether the provisions of the Code of Obligations are applied in temporary work agencies. Indeed, civil courts supervise this type of application when complaints are brought before them.

CSC/CNG: (1) and (2) Yes.

United Kingdom. BIU: (1) and (2) Yes.

United States. The language suggests that the only way to ensure "effective application of legal rules applicable to private employment agencies" is by means of labour inspection; that, in our view, is overly limiting.

USCIB: Yes, provided that such a provision is applicable only to those Members who choose special legal rules rather than some other method of monitoring.

AFL-CIO-CLC: Yes.

Zimbabwe. Unfair employment practices and other anomalies in the labour market can mostly be uncovered through regular inspections of private employment agencies. (2) Remedies and penalties are absolutely necessary to deter private employment agencies from infringing the legal rules.

A majority of governments and workers' organizations approved this role of the labour inspection services. However, a minority of governments and employers' organizations felt that these duties were not within the competence of the labour inspectorate. A number referred to the Labour Inspection Convention, 1947 (No. 81) as an argument against the competence of the labour inspectorate in this area.

The Office took account of all these observations in drafting Article 11 of the proposed text of the Convention. The Office was also better able to structure this text by including the provisions concerning its application (question 20).

Relationships between the public employment service and private agencies

Should the Convention provide that a Member should promote, in consultation with organizations of employers and workers, complementarity and cooperation between the public employment service and private employment agencies?

Qu. 15

Total number of replies: 66.

Affirmative: 57. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Jordan, Republic of Korea, Lebanon,

Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Panama, Peru, Philippines, Portugal, Qatar, Romania, Sierra Leone, Singapore, Slovakia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United States, Uruguay, Zimbabwe.

Negative: 5. Germany, Japan, New Zealand, Poland, United Kingdom.

Other: 4. Chile, Finland, Ireland, Norway.

Argentina. (questions 15-20) In accordance with the spirit and objective of the proposed revision of the Convention — i.e. to improve the functioning of the labour market — provision should be made for the adoption of measures to promote relations between the public and private services; the public authorities should continue to be exclusively responsible for defining labour market policies, within a framework which allows cooperation and complementarity with the private sector in the implementation of such policies. An important aspect in this respect is the obligation to provide the competent authority with detailed information on the types of services provided, and the numbers of placements made and other services provided.

UIA: Yes. This would be beneficial to all sectors and promote greater transparency in the labour market.

CGT: The Convention should provide that employers' and workers' organizations should act in complementarity and cooperation with the public employment service and the private employment agencies with a view to promoting the well-being of employees. The CGT prefers to speak of complementarity including cooperation between the public employment services and private employment agencies in providing services to workers and user enterprises. The relationship should not be one of competition in the strict sense of the term.

Australia. ACCI: The Convention should provide for the promotion of complementarity and cooperation between public services and private agencies only in so far as private agencies become involved in public sector programmes and receive public funding. Public sector agencies should have no role in the operation of private employment agencies.

Austria. Yes, because depending on the target group and specific activity, one form of placement might bring better results than another.

Belgium. Yes, a mixed system should be encouraged, as advocated by report IV (1) of the ILO.

Wallon Region: A mixed management system is based on three fundamental components — competition, complementarity and cooperation; only a combination of these three indissociable components guarantees the required effects. However, the question omits the concept of "competition" — which is somewhat surprising given the importance attached to this in both the report of 1994 and that of 1996.

Brazil. CNI and CNA: Yes.

Chile. (questions 15 and 16) In Chile, this would produce positive results only if national legislation were to consider organizations which supply other employment-related services than private agencies.

Costa Rica. Given the financial impossibility of governments to strengthen and extend the public employment services to keep up with developments, it should establish general guidelines on the complementarity and cooperation between the public employment service and private employment agencies.

Côte d'Ivoire. UGTCI: The Convention should specify the recognition of private employment agencies whilst underlining their lawful role in the labour market, after consultation with workers' and employers' organizations.

Czech Republic (CMK OS). The Convention should oblige the contracting parties to cooperate with social partners to support complementarity and cooperation between public

labour offices and private employment agencies. This cooperation should be institutionalized by law in the form of consulting bodies.

Denmark. In Denmark there is excellent cooperation between a number of offices in the public employment service and private employment agencies. It would be relevant to include in the Convention, or perhaps more appropriately in the text of the Recommendation, a provision to the effect that member States should support efforts to ensure the best possible interaction between public and private placement systems.

Finland. Guidelines on the promotion of cooperation between public and private employment services could be incorporated within the Recommendation rather than the Convention. The scope and function of public and private employment services could be specified in the Recommendation.

TT and LTK: In response to questions 15, 16 and 27, the employers' organizations wish to point out that the ties between private and public employment services are strictly a national concern, and may vary depending on the conditions in the country concerned.

Germany. Public and private labour placement services should themselves be able to regulate whether and in what ways they might collaborate.

BDA: This is not a subject which is amenable to effective statutory regulation. If at all, this should be dealt with in a Recommendation.

DGB: Given that public and profit-making private placement agencies are competitors, the scope for cooperation between these two services is somewhat limited. Be that as it may, this cooperation should be equally supported by both employers and trade unions.

Honduras. The Government is of the opinion that the public employment service and the private employment agencies can share the labour market — but a clear distinction must be made between them; the public service, by its very nature, must assume its inalienable role.

Hungary. Cooperation between state and private employment agencies is justified by all means. Regarding the member States, however, it seems unnecessary to prescribe concrete measures.

Ireland. The competent authorities should encourage or facilitate cooperation but this should remain on a voluntary basis.

Japan. This should take the form of a Recommendation, in order to make it possible to respond in a flexible manner. The word "complementarity" should be deleted.

Lebanon. The Government feels that there should be coordination and not complementarity between the public and private employment agencies because the task of guaranteeing jobs is incumbent upon the State which drafts policies in this area.

Malaysia. Yes, from the economic point of view, cooperation between the public and private agencies leads to social progress because it provides an optimum utilization of human resources, thereby avoiding distortions in wages and incomes.

Netherlands. FNV, CNV, MHP: It is important to stress the required consultation with workers' and employers' organizations. Complementarity should not be understood as "subsidiariness".

New Zealand. In New Zealand, the public employment service (NZES) and the private employment agencies tend to deal with different segments of the labour market in terms of jobseekers, jobs and, to a lesser extent, employers. In practice, the two sectors do not compete directly, and conversely, they have little need to cooperate in the delivery of services.

NZEF: Complementarity is a feature of public and private agencies in New Zealand and does not require promotion.

Norway. This is a matter for the Recommendation.

LO: Yes.

Poland. OPZZ and Solidarnosc: Yes.

Spain. UGT: (questions 15-20) The Government feels that the proposals contained in these questions are appropriate. It would like to add that employment policy should be adopted by the Government in cooperation with the social partners (trade union and employers' organizations). In order to coordinate the activities of the public employment services and private agencies, provision should be made for a participatory management structure (tripartite) as part of the public employment service, in addition to a broader coordinating body which would include representatives (tripartite) from the public service and the private agencies.

Sweden. The Convention should provide that cooperation between the public employment service and private employment agencies is desirable, where possible, but that the procedures for this should be left for national decision.

Switzerland. Given that Convention No. 96 is being revised to create conditions likely to improve the functioning of the labour market and private employment agencies, this should be acknowledged by the Convention and specified in the Recommendation.

CSC/CNG: Yes.

United Kingdom. Regulation should not be required to facilitate cooperation.

CBI: Yes.

BIU: Yes.

United States. The cited benefits of complementarity and cooperation seem to warrant encouragement.

AFL-CIO-CLC: The Federation emphasizes the importance of consultations of organizations of workers and employers with regard to the legitimacy of private agencies in the labour market.

Zimbabwe. Cooperation and complementarity between the public employment service and private employment agencies are essential for the smooth functioning of the labour market.

The section of the questionnaire concerning relationships between the public employment service and private agencies (questions 15-19) prompted a large number of replies and observations. This issue may be viewed in the context of the discussions which took place at the 81st Session (1994) of the Conference. Many governments wanted to consolidate the relationships between the public and private services to improve the functioning of labour markets. The workers' organizations supported this proposal and advocated participatory structures. However, the employers' organizations, as well as a significant minority of governments, doubted that a joint management system would be effective. Many replies proposed a simple and non-binding framework.

A number of governments emphasized that the state authority should retain control of this matter. They did not feel that the concept of "complementarity" had its place in this context. Consequently, many governments replied negatively to several of the questions in this section. A majority of governments and employers' organizations stated that they could only support a Recommendation concerning measures to increase cooperation between the public employment service and private employment agencies.

An examination of the replies received reveals that there is a consensus regarding the objective of an improved functioning of labour markets. The majority of replies wished to see increased cooperation between the public and private services. There was also a large majority in favour of a provision that — whilst acknowledging the role of the tripartite structures—it was incumbent upon governments to ensure that the public service or other specifically designated bodies should have the final

responsibility for certain functions of general interest. Several governments, as well as workers' organizations, felt that this responsibility could be viewed in the context of active employment policies. Provisions concerning the use of public funds and information should thus be contained in the new Convention. The majority of governments were of the opinion that private employment agencies should provide information on their activities to improve the transparency of labour markets. Apart from these functions, the gist of the replies was that the public employment services should carry out their tasks in cooperation with the private agencies. A number of governments also saw advantages in a certain amount of competition between the public and private services.

On the basis of the replies to questions 15 and 19 and in view of the arguments put forward, the Office only retained Article 10 in the proposed text of the Convention.

Should the Convention provide that specific measures be taken for establishing this complementarity and cooperation? If so, please specify. **Qu. 16**

Total number of replies: 60.

Affirmative: 26. Argentina, Belgium, Bulgaria, Colombia, Congo, Côte d'Ivoire, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Ghana, Indonesia, Jordan, Republic of Korea, Malaysia, Mali, Mauritius, Nicaragua, Oman, Philippines, Qatar, Sierra Leone, Spain, Uruguay, Zimbabwe.

Negative: 28. Australia, Austria, Bahamas, Canada, Cuba, Cyprus, Czech Republic, France, Germany, Guyana, Honduras, Hungary, Ireland, Japan, Lithuania, Mexico, Netherlands, New Zealand, Peru, Poland, Romania, Singapore, Sri Lanka, Sudan, Sweden, Turkey, United Kingdom, United States.

Other: 6. Chile, China, Finland, Norway, Panama, Portugal.

Argentina. UIA: There is no need to provide for the adoption of specific measures to establish this complementarity and cooperation, since each Member will establish those considered most appropriate in this respect. These provisions could form part of a Recommendation and in this respect the UIA suggests the establishment of joint committees for consultation and analysis, the publication of joint reports, research studies by geographic or economic sector, etc.

CGT: Yes. (a) In the event that the public employment service does not place a worker within a specific period, a mechanism of transfer to a private employment agency or vice versa could be established. (b) The establishment of a system of training courses and assistance for both the public employment service and private enterprises.

Australia. These matters should be dealt with by the Recommendation.

Austria. No, this should be left up to each member State.

Belgium. Yes, the competent authority should be able to define the conditions under which this complementarity and cooperation are exercised.

Wallon Region: The concept of "complementarity" may in no way imply the exclusion of the public service from certain types of activities aimed at specific categories of users. A number of measures have more to do with the definition of the necessary prerequisites for establishing this complementarity and cooperation; others belong in the category of means required to bring this about; finally, others measures already constitute actions of complementarity and/or cooperation.

Brazil. CNI: Yes.

CNA: No.

Colombia. Yes. Regulations.

Congo. Yes, this complementarity and cooperation might be established by methods in accordance with national law and practice; for example, dialogue and discussions within national advisory tripartite bodies such as the employment committee, the signing of framework agreements, exchange of information, etc.

Côte d'Ivoire. There should be cooperation in areas such as vocational retraining programmes, training programmes for the hard-core unemployed, etc.

Cuba. No. This should be adapted to national characteristics.

Cyprus. Such provisions could be included in the Recommendation.

PEO: Yes. A tripartite body should be established for discussions on general policy or draft legislation or regulations. Within this body the employers' and workers' organizations should be represented.

Czech Republic. This provision should be contained in a Recommendation, in view of the fact that agreement must be reached at the national level according to specific circumstances.

Finland. Means of promoting cooperation between public and private employment services could be specified in the Recommendation.

SAK, STTK and AKAVA: The confederations suggest that possible measures should include cooperation in training and education, exchange of information (including shared data banks, cooperative bodies, etc.).

Germany. There are so many factors to be taken into account, and their influence varies so much from country to country, that there is little point in mentioning a few measures which promote complementarity and collaboration.

DGB: In the non-profit-making sector, cooperation should be stepped up and co-financed institutions could be set up for specific groups of individuals.

Honduras. No. Cooperation and complementarity within a State should arise naturally without being made compulsory.

Indonesia. The public employment services should confer with private employment agencies on ways to recruit, train and implement the labour legislation.

Ireland. No, although the Convention could suggest or recommend.

Japan. This should be in the Recommendation.

Jordan. Yes, by means of the legislation in force.

Amman Chamber of Commerce: Yes, for an exchange of information on job vacancies and allocation of posts.

Republic of Korea. Organizing training sessions with the public and private employment agencies.

Malaysia. The Convention should provide for exchange centres throughout the member States which give information on labour markets.

Mali. This complementarity could take the form of an exchange of information on the labour market.

Mauritius. By frequent contacts and exchange of information and statistics between public and private employment agencies.

Mexico. The adoption of measures should be a decision taken by the government with the collaboration of employers and workers.

Netherlands. Compulsory cooperation would not be effective. This cooperation must be sought by both parties.

Nicaragua. A tripartite committee should be set up to attain this objective.

Norway. This should be included in the Recommendation.

LO: Yes, equal opportunity for all workers and jobseekers in respect of information related to the labour market and to job possibilities must be secured. The public employment service should have the main responsibility, but where appropriate be complemented by private employment services.

Oman. Yes, special committees or joint committees should be set up to establish this complementarity.

Panama. The adoption of any measures to establish complementarity should be in line with the regulations prevailing in each member State.

Peru. Such measures should be laid down in a Recommendation, not a Convention, so as to allow member States and employers' and workers' organizations greater freedom to determine.

Poland. Solidarnosc: No, the Convention should invoke the principle of tripartite consultation — of fundamental importance for social dialogue — and advocate it as a measure for establishing complementarity and cooperation between the public employment service and private employment agencies. Reference could accordingly be made to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

Portugal. Specific measures to promote complementarity and cooperation between the public employment service and private employment agencies should appear only in the Recommendation and be decided by member States, after consultation with the representatives of employers and workers.

Qatar. Yes, but it should be left up to national legislation to determine these measures to guarantee flexibility in application.

South Africa. Possible forms of complementarity and cooperation should be the subject of a Recommendation.

Spain. The Convention could define the role of the public service as one of structuring and supporting private activity, with the items listed in question 27 serving as examples.

CEO: Specific measures could include collaboration agreements, the leasing-out of private employment agency services and an exchange of information and statistics between the public employment service and private employment agencies.

Sudan. This should be left to the judgement of each State.

Switzerland. SVUTA- FSETT: Possible forms of complementarity and cooperation should be incorporated into a Recommendation rather than a Convention.

Turkey. No, this should be left to ratifying States.

TISK: Complementarity and cooperation should be established in accordance into the requirements of national labour markets.

TÜRK-İS: Yes.

United Kingdom. BIU: Yes.

United States. There is danger of becoming overly prescriptive in a general policy document; the risk is that creativity would be limited to suggested measures.

AFL-CIO-CLC: Yes.

Zimbabwe. Specific measures to establish complementarity and cooperation between the public employment service and private agencies could be in the form of: (a) sharing of information; (b) staff exchange programmes.

See the comments of the Office under question 15.

Qu. 17 *In order to ensure the adequate functioning of the labour market, should the Convention provide that, in relevant cases, the public authorities should retain exclusive authority for:*

- (a) formulating labour market policy?*
- (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy?*
- (c) collecting and distributing information on the overall situation of the labour market?*
- (d) other areas? (Please specify.)*

Subparagraph (a)

Total number of replies: 61.

Affirmative: 49. Argentina, Australia, Austria, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Honduras, Hungary, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Oman, Peru, Philippines, Poland, Portugal, Qatar, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United States, Uruguay.

Negative: 10. Colombia, Germany, Guyana, Ireland, Mexico, Netherlands, New Zealand, Norway, Romania, Zimbabwe.

Other: 2. Canada, United Kingdom.

Subparagraph (b)

Total number of replies: 58.

Affirmative: 47. Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, Estonia, Ethiopia, Finland, Ghana, Guyana, Honduras, Hungary, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Oman, Peru, Philippines, Poland, Portugal, Qatar, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Turkey, United States, Uruguay.

Negative: 9. France, Germany, Ireland, Mexico, Netherlands, New Zealand, Norway, Romania, Zimbabwe.

Other: 2. Denmark, United Kingdom.

Subparagraph (c)

Total number of replies: 59.

Affirmative: 41. Bahamas, Belgium, Bulgaria, Chad, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, Estonia, Ethiopia, Guyana, Honduras, Hungary, Indonesia, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Oman, Peru, Philippines, Poland, Portugal, Qatar, Saudi Arabia, Sierra Leone, Sri Lanka, Sudan, Thailand, Turkey, United States, Uruguay.

Negative: 13. Australia, Austria, France, Germany, Ghana, Ireland, Mexico, Netherlands, New Zealand, Norway, Romania, Sweden, Zimbabwe.

Other: 5. Canada, Chile, Denmark, Finland, United Kingdom.

Subparagraph (d)

Total number of replies: 14.

Affirmative: 7. Belgium, Cuba, Cyprus, Ethiopia, Malaysia, Nicaragua, Sudan.

Negative: 4. Canada, France, Ghana, Ireland.

Other: 3. Austria, Panama, United Kingdom.

Argentina, UIA: The UIA does not believe it necessary for the Convention to contain such provisions, since the exclusive competence of the public authority of each Member country cannot be fixed in a Convention of this kind by the Organization.

CGT: (b)-(c) Yes. (d) The establishment of penalties in the event of non-compliance with the objectives established by the public authority.

Australia. (a) and (b) Yes, but the wording should be amended from "exclusive" to "ultimate" or "final". The suggested amendment recognizes an increasing trend for other players (such as employers' and workers' organizations) to provide input to policy formulation. (c) is not acceptable. The private data collections complement the collection of data by the public authorities and assist in ensuring the availability of high quality data. This situation should be allowed to continue.

ACCI: (a)-(c) No.

Austria. (c) No, because in some cases it is also necessary to obtain information on various market segments which might be communicated at the level of the regions and/or services. (d), Unnecessary.

VÖI: (a) The VÖI rejects any restrictions of this type. The public authorities might always formulate labour market policy but this should not have any influence on the activity of private employment agencies.

Belgium. (c) Yes. An actor on the labour market should be singled out or made responsible in this area. (d) Any other powers should remain with the public authority.

Brazil. CNI: (d) Yes.

CNA: (c) Yes.

Canada. (a) The formulation of labour market policies should be done by public authorities, in consultation with businesses, labour, community groups and other relevant

stakeholders. National policies should be flexible enough to allow arrangements in each local labour market to vary and adjust to local labour market needs. (b) With the understanding that third parties, including PEAs, can be used to deliver publicly-funded programmes. (c) Public authorities should be the main collector and distributor of broad labour market information. However, there is no need for a monopoly situation of public authorities in this area.

Chile. (a) Yes, inasmuch as this is linked to economic policy. (b) Yes, though the public authorities may commission studies from the public sector. (c) The authorities may supply information to private organizations for distribution and, similarly, use and disseminate the information delivered by the private sector.

Cuba. (d) Yes. In accordance with national characteristics.

Cyprus. (d) Vocational guidance.

Czech Republic. KUK: (c) There is no reason to prevent private agencies from these activities if they are interested in them.

KPZS CR: (d) Placing public orders.

Union of Industry and Transport (SPD CR): (d) Support of active employment policy.

Denmark. (a) It seems natural that the central public authorities should formulate the labour market policy. (b) This is a natural task for the public authorities, but if it is found appropriate, other authorities could be entitled to perform this task. (c) The same as under 17(b).

DA: (a)-(c) No. The role of the public sector in the labour market is not a subject which should be covered in an ILO Convention on private employment agencies.

FTF: (a), (b), (c) Yes, absolutely.

LO and AC: (b), (c) Yes.

Ethiopia. (d) The public authorities should retain authority for placement services for people working abroad and foreign nationals within the country.

France. CFDT: (b), (c) Yes, in consultation with the employers' and workers' organizations.

Germany. Regulations on labour market policy should not be included in the Convention. The proposals made in this question exceed the framework of a Convention on private employment agencies.

DGB: (a) and (b) Any measures taken in the area of placement to formulate or ensure the adequate functioning of a labour market policy should be concentrated in the public employment agencies. (c) Steps should be taken to ensure that private agencies are not able to keep the market transparency artificially limited. (d) It should be possible to ban the leasing of workers in some specific areas.

Hungary. At the same time, it is also necessary to involve the private employment agencies in the collection of labour market information.

Indonesia. In relevant cases, the public authorities should collect and distribute information on the overall situation of the labour market.

Ireland. The role of the public sector should not be defined in a Convention on employment agencies.

Malaysia. (c) The Convention should note that an exchange of information between member States might be beneficial to all of them in providing services of public and private employment in labour market operations. (d) Yes, with regard to the inflow of foreign labour.

Mexico. This is considered to be outside the scope of this Convention.

Netherlands. The collection and dissemination of information should certainly not be the exclusive preserve of the public authorities.

VNO-NCW: (a)-(c) No, there is not any need to (re)affirm the autonomy, powers and responsibilities of the public authorities.

FNV, CNV, MHP: (a)-(c) Yes.

Nicaragua. (d) Penalties should be applied.

Norway. (a)-(c) This should be left up to national regulation.
LO: (a)-(c) Yes.

Panama. (d) The public authorities should have a control over private employment agencies to ensure that they are operating properly.

Peru. Yes to all the proposed alternatives, including the establishment of development strategies specifically geared to promoting employment.

Portugal. The CIP does not agree that the public authorities should retain exclusive authority for these matters.

CCP: (a)-(d) The role of the public sector should not be covered by an ILO Convention.

South Africa. BSA: No. The adequate functioning of the labour market and the role of public authorities are highly complex and should not be covered in an ILO Convention on PREAs.

Spain. CEOE: (c) Yes. In addition to (a), (b) and (c), the instrument should also promote the creation of tripartite bodies for collaboration in such spheres, in which both the exchange of information and the presence of the most representative employers' and trade union organizations are indispensable.

Sri Lanka. (a) Yes, exclusive authority but in consultation with private employment agencies.

Sudan. (d) Such as the registration, employment and protection of the workforce.

Switzerland. The public authorities should retain exclusive authority — subject to compliance with tripartism — for formulating labour market policy and utilizing public funds earmarked for the implementation of this policy. However, the possibility — indeed utility — of other entities being able to collect and distribute information on the labour market should be acknowledged.

CSC/CNG: (a)-(c) Yes.

SVUTA-FSETT: The role played by the public sector on the labour market is no subject for an ILO Convention on private employment agencies.

Turkey. TISK: Only subparagraph (c) would be appropriate.

United Kingdom. It is difficult to foresee a situation where private employment agencies would be involved in formulating labour market policy, controlling the use of public funds and collecting/distributing information on the overall situation of the labour market.

BIU: (a)-(c) Yes, but only after serious consultation with representative unions and employers.

United States. USCIB: (c) No. In several countries, PREAs collect and distribute information on national and local labour market conditions. They should not be discouraged from continuing to do so. In many cases, public authorities use this information in formulating policy.

Zimbabwe. The public authorities should not retain exclusive authority for these functions. There should be consultations between the public authorities and workers' and employers' organizations at all times.

See the comments of the Office under question 15.

Qu. 18 *Should the Convention provide that private employment agencies should, at regular intervals, supply detailed information to the competent authority in respect of:*

- (a) their location, structure and staff?*
- (b) the types of services provided?*
- (c) the number and the distribution of placements made and of services provided?*
- (d) other data? (Please specify.)*

Subparagraph (a)

Total number of replies: 63.

Affirmative: 48. Argentina, Austria, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Estonia, Ethiopia, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Netherlands, Nicaragua, Oman, Panama, Peru, Philippines, Portugal, Qatar, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Switzerland, Thailand, Turkey, Uruguay, Zimbabwe.

Negative: 13. Australia, Cyprus, Denmark, Finland, Ireland, Mexico, New Zealand, Norway, Poland, Romania, Sweden, United Kingdom, United States.

Other: 2. Canada, Germany.

Subparagraph (b)

Total number of replies: 61.

Affirmative: 48. Argentina, Austria, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Colombia, Congo, Cuba, Czech Republic, Ecuador, Estonia, Ethiopia, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Netherlands, Nicaragua, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Switzerland, Thailand, Turkey, Uruguay, Zimbabwe.

Negative: 10. Australia, Cyprus, Denmark, Finland, New Zealand, Norway, Romania, Sweden, United Kingdom, United States.

Other: 3. Canada, Germany, Ireland.

Subparagraph (c)

Total number of replies: 63.

Affirmative: 51. Argentina, Austria, Bahamas, Belgium, Chad, Chile, China, Colombia, Congo, Czech Republic, Costa Rica, Côte d'Ivoire, Cuba, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali,

Mauritius, Mexico, Nicaragua, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Saudi Arabia, Sierra Leone, Sri Lanka, Spain, Sudan, Switzerland, Thailand, Turkey, Uruguay, Zimbabwe.

Negative: 9. Australia, Cyprus, Denmark, New Zealand, Norway, Romania, Sweden, United Kingdom, United States.

Other: 3. Canada, Germany, Ireland.

Subparagraph (d)

Total number of replies: 20.

Affirmative: 16. Belgium, Czech Republic, Ethiopia, France, Honduras, Hungary, Malaysia, Mali, Nicaragua, Panama, Peru, Philippines, Poland, Sierra Leone, Spain, Sri Lanka.

Negative: 3. Austria, Chile, United Kingdom.

Other: 1. Ireland.

Argentina. UIA (d) The Convention might stipulate that private employment agencies should provide the competent authority with the information required by each scheme established by a Member. The periodicity of such information and its details and content should not be part of a Convention, although provision to this effect could be made in the Recommendation.

CGT: (d) Respect of the maximum rates which private employment agencies may charge in respect of expenses and fees established by the competent authority should be monitored.

Australia. (d) Reporting requirements for PREAs should be flexible and at the discretion of the competent authority. Imposing requirements such as those listed under this question on a regular basis would not necessarily be efficient.

ACCI: The Convention should place no greater information obligations upon private employment agencies than are placed upon other employers/commercial entities in the service sector.

Austria. VÖI: The VÖI rejects any obligations of this nature, including information on results obtained.

Belgium. (d) The financial structure and rates applied.

Wallon Region: Their practices, methods and equipment.

Brazil. CNI: (a)-(c) No.

CNA: (c) Yes.

Canada. Add "in appropriate cases" before "at regular intervals" and "such items as" after "in respect of". When a contract is signed between PES and PREA to deliver publicly funded employment programmes, the PREA should be required to report information on participants and results (in terms of how many became employed).

Chile. (a) Information that should be collected by regular inspections. (b) Verifiable by inspection (notified when the agency is set up). (c) Periodic supply of information for statistical purposes.

Congo. Yes, to allow the public authorities to ensure that private employment agencies are complying with the legislation in force and that workers are receiving social protection.

Costa Rica. To avoid the public employment services from being solely responsible for placement, private employment agencies should be obliged, on a regular basis, to submit

information on human resources and offers of placement broken up by occupation — irrespective of whether these jobs were filled or not. This information should be submitted on a trimestrial basis.

Côte d'Ivoire. UGTCl: Yes.

Cyprus. (a)-(c) These provisions could be included in the Recommendation.
PEO: Yes.

Denmark. The Convention should not contain provisions which impose a duty to report on private employment agencies. It could be useful to have a survey of the placement market as a whole, including the number of actors, the ways in which they perform their activities and their results. But it should be left to the national authorities to decide how this information is most appropriately provided and at what intervals.

DA: TWAs should be required to provide public authorities with the same level of information about their activities as other employers.

LO, AC and FTF: (a) Yes, but variation from country to country should be possible.
LO and AC: (b), (c) Yes.

Ethiopia. (d) Number of jobseekers registered and number of vacancies.

Finland. No. It may prove necessary to collect information on private employment agencies, but it would be unreasonably burdensome for this to be stipulated under the Convention. Guidelines to this effect could be incorporated in the Recommendation.

SAK, STTK and AKAVA: (a)-(c) Yes. (d) Inclusion of shared data banks.

France. (d) A breakdown of placements according to length of contract, the branches of activity and skills of the persons placed.

Germany. Provision should be made for a reporting obligation by private employment agencies. However, it should be left to national legislation to decide which information should be provided by such agencies.

DGB: (a)-(c) Yes. (d) The information should also contain data on the inclusion of target groups in the labour market.

Honduras. (d) The enterprises to which they provide services; general information on each of the placements made; and the number and category of the job offers they have received.

Hungary. The obligation to supply data is justified by all means. In addition to subparagraphs (a)-(c), it is also necessary to indicate such labour demands which the agency is permanently unable to satisfy, as well as the needs of the employees for whom the agency is unable to find jobs.

Ireland. The Government sees little value in accumulating information at regular intervals on the structure of the employment agencies themselves. It could see some merit if private employment agencies were required to supply statistics relating to job vacancies and placements which could be used by the competent authorities or by the public employment service.

Japan. The expression "and staff" in (a) should be revised to "executives and employees who are responsible for employment services". (c) The expression "the distribution of placements made" should be deleted.

ZENROREN: (d) Private employment agencies should supply information on names of client companies or users, the number of workers dispatched, pay of dispatched temporary workers, their pay in comparison with workers of client companies, social insurance conditions, employment insurance of dispatched temporary workers, contents of complaints as well as the names of dissatisfied client companies.

Malaysia. Employment agencies should include detailed information on office location, working conditions and other relevant conditions, possibilities and requirements. (d) Changes in management set-up and change of premises.

Mali. (d) As well as any other information which occurs in the normal course of their activities and which is not specified here.

Mexico. (d) Private employment agencies should provide the competent authorities with data for a national register. It should be taken into account that the competent authorities might require additional information concerning the conditions and extent of the services provided by private agencies.

Netherlands. VNO-NCW: (c) No.

FNV, CNV, MHP: (b) No. (c) Yes.

New Zealand. Without specific regulation of employment agencies, there would be no need for this information.

NZEF: Since most private-sector employment agencies are profit-oriented, it is difficult to see what would be achieved by requiring the provision of such information.

Nicaragua. Respect for measures concerning non-discrimination.

Norway. National regulation.

LO: (a)-(c) Yes. (d) In addition there should be required data concerning costs and income in a manner that will help identify hidden payments from workers and or jobseekers.

Oman. (d) Information on vocational guidance and training.

Panama. (d) The agencies should provide the State with the information it needs, which could include that mentioned under subparagraphs (a)-(c) subject to the provision that other information might be requested according to the conditions prevailing in each country.

Peru. (d) Yes to all of the proposed alternatives; include also the number and breakdown of placements made by occupational groups and categories, economic activity and size of the enterprise; in addition, average remuneration of the occupational groups and categories.

Philippines. (d) Foreign exchange generated.

Poland. OPZZ and Solidarnosc: Yes. (d) Annual income; labour disputes in which private employment agencies have been involved.

Portugal. CCP: (a)-(d) These issues are a matter for the national decision-makers. Temporary employment agencies must provide the same kind of information as other employers.

Sierra Leone. (d) Statistical data on sex, wages, hours of work, occupational injury and diseases, job classification and employment relationship — as well as the amount involved.

South Africa. BSA: No, the same as for any other business.

Spain. Employment agencies should provide the competent authority with data on: the number of jobseekers who have requested their services; the number of jobseekers who are no longer registered on their books; the number of rejections of offers by jobseekers on unemployment benefit, with details of the reasons for these rejections.

CEOE: Normally the information to which reference is made in (a) and (b) is provided at the time of establishment, registration or authorization of private employment agencies.

Sri Lanka. (d) Salaries, details of placements, approvals for recruitment, etc.

Sudan. (d) To be determined by each State according to its needs.

Sweden. Detailed directions of this kind are more appropriate to a Recommendation.

Switzerland. Inasmuch as the new instrument acknowledges the role of private agencies as actors capable of contributing to a better functioning of the labour market, these agencies should be obliged to provide regular information so that the market might be monitored.

CSC/CNG: (d) Yes. Vacancies.

SVUTA-FSETT: (d) The extent to which TWAs are obliged to inform state authorities about their activities should be the same as that applying to other employers.

VSA: (c) With a view to enabling the State to conduct an active labour market policy, the private employment agencies should supply detailed information at regular intervals with regard to the number and distribution of placements made and services provided.

United Kingdom. (a)-(d) This would be of limited value and would conflict with deregulation policies aimed at lightening bureaucratic burdens on industry.

BIU: (a)-(c) Yes. (d) The number and category of jobs not filled during a specific period.

United States. No, (a)-(c). The nature of reporting should be left to the discretion of individual Members and the realities of the market place.

AFL-CIO-CLC: Yes, (a)-(c).

Uruguay. (d) Statistical information on: number of requests from enterprises, broken down by occupation and branch of activity; number of workers (jobseekers) broken down by sex and occupation.

Workers' sector: Specific description of model used for collecting data.

See the comments of the Office under question 15.

Qu. 19 *Have you any other proposals regarding information in support of improved functioning of the labour market?*

Total number of replies: 50.

Affirmative: 15. Bahamas, Belgium, Chile, Colombia, Côte d'Ivoire, Republic of Korea, Honduras, Hungary, Indonesia, Jordan, Lebanon, Mexico, Sierra Leone, Spain Zimbabwe.

Negative: 34. Argentina, Australia, Austria, Bulgaria, Canada, Chad, Congo, Cuba, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, Ghana, Guyana, Japan, Lithuania, Mauritius, Nicaragua, New Zealand, Norway, Oman, Panama, Peru, Poland, Portugal, Qatar, Romania, United Kingdom, United States, Turkey, Uruguay.

Other: 1. Ireland.

Argentina. CGT: Regulations should be established concerning the instruments and methods used by agencies for the compilation and use of data, the preparation and use of computer files, selection tests, studies, surveys and publication of job offers, etc.

Australia. Improved functioning of the labour market is achieved through the efficient matching of labour supply and demand. Economies experience enough difficulty in matching labour supply and demand, without having artificial constraints limiting this market clearance (i.e. reduced unemployment) when improved supply and demand conditions are reached.

Belgium. If the labour market is organized on competitive lines, this presupposes transparency in the information concerning this market; this should be assured by means of a centralized institution which acts as a clearing house for unfulfilled job offers. As it is impossible for the public employment services to organize and coordinate information on the labour market, the employment administrations of the member States should take the initiative to establish annual employment statistics.

Brazil. CNI and CNA: No.

Colombia. Yes. Information services to which the social partners contribute.

Côte d'Ivoire. As regards the statistics to be provided to the competent authorities, in the case of job offers these should include: the name, first name, corporate name, address and number of application to the national social provident fund (CNPS); in the case of requests for employment, these should include the jobseeker's number of registration with the social provident fund, as the case may be.

Denmark. DA: Attempts to improve the functioning of labour markets belong within a highly complex and general labour policy question. It is entirely inappropriate to attempt to address this question in an ILO Convention on private employment agencies.

Germany. DGB: There must be some sort of provision to be able to ask leasing agencies for additional information on the length of time they hire out their employees, as well as for details on the hire in question, working and pay conditions.

Indonesia. Information on overseas workers, self-employment, placement of foreign workers, and the geographical mobility of workers.

Ireland. This is a very broad question and goes beyond the scope of a Convention on employment agencies.

Japan. NIKKEIREN: In order to improve the functioning of the labour market, the revised Convention should provide that information on the Internet would be useful for matching job offers and job applications.

JTUC-RENGO. Fair labour information, equal access by workers and other rights of workers should be guaranteed. The provisions in relation to Part III of the current Convention No. 96 should be included.

Jordan. Yes, by carrying out a regular general survey on the labour market — on a continual basis.

Federation of Chambers of Commerce in Industry: No.

Republic of Korea. In order to improve the functioning of the labour market, a convention on TWAS should be adopted in addition to the Fee-Charging Employment Agencies Convention (No. 96).

Lebanon. The Government feels that measures likely to improve the functioning of the labour market would include the setting up of a national body comprised of private employment agencies — if they exist — public employment offices, and representatives of employers' and workers' organizations and employment-related services; this body could deal with issues concerning improvements in the situation of the labour market.

Mexico. The setting up and running of information systems could be envisaged, with national, regional and sectoral coverage through which it would be possible to concentrate information on the labour market situation — given the particularly important role that private agencies play in this area.

Portugal. CCP: The improved functioning of the labour market is a very complex matter and should not be included here.

Sierra Leone. The publication and dissemination of labour market information.

Spain. Employment agencies should inform the competent authority, within a reasonable period of time, of any change in ownership, the opening of new work centres, or the termination of activities.

Switzerland. CSC/CNG: The setting up at local, regional and national level of a system of cooperation between the public employment services and private employment agencies concerning information on job vacancies.

SVUTA- FSETT. The improved functioning of the labour market is a highly complex, general employment policy issue; consequently, attempts to deal with the question in an ILO Convention on private employment agencies are entirely inappropriate.

United States. USCIB: Cooperation between public employment services and PREA would be enhanced if PREA could be assured that when competition between the two types of agencies existed, there would be no subsidies or other facilities that skewed the results in favour of the public agencies.

Uruguay. Workers' sector: Yes. The provision intended for the Recommendation in question 24(ii) should be incorporated in the Convention. The same applies to 28(1) and (2).

See the comments of the Office under question 15.

Qu. 20 *Should the Convention provide that its provisions should be given effect by laws or regulations or any other method consistent with national practice?*

Total number of replies: 62.

Affirmative: 55. Australia, Austria, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Ghana, Guyana, Honduras, Ireland, Japan, Jordan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Spain, Sri Lanka, Sudan, Sweden, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 1. Canada.

Other: 6. Argentina, Germany, Hungary, Indonesia, New Zealand, Switzerland.

Argentina. UIA: The methods by which each Member applies the provisions of international Conventions are its own responsibility and it is inappropriate for the Convention to refer to this matter.

CGT: Yes. The adoption of a Convention does not necessarily result in its immediate application since various national schemes provide for ratification procedures.

Bahamas. The provisions should be given effect by laws.

Brazil. CNI and CNA: Yes.

Chile. It may be necessary to envisage specific legislation.

Costa Rica. In the case of international Conventions, provisions should be given effect by laws or regulations; as far as details of regulations are concerned, provision should be given effect by means of decree.

Cyprus. PEO: By laws and regulations issued under the provisions of the basic law.

Estonia. That provision should be flexible.

Germany. States should be free to decide by which methods the Convention is to be incorporated into national law.

Honduras. Each member State should apply and adapt the provisions of the Convention to its legislation in accordance with its national law and practice; consequently, it matters little whether this provision is featured or not in the text of the Convention.

Hungary. Question 14 contains proper provisions with respect to the enforcement of the relevant rules of law.

Mexico. Yes, as the legal instruments governing placement services could be promulgated in accordance with the legal rules of each country (by the executive or legislative power or both).

Saudi Arabia. By laws and regulations.

South Africa. BSA: Yes.

Switzerland. The Government feels that it is preferable to opt for flexibility as regards methods of application.

CSC/CNG: There should also be a reference to collective agreements. The expression "any other method consistent with national practice" is not very satisfactory.

SVUTA-FSETT: Yes.

Zimbabwe. The provisions of the Convention should be incorporated into the labour laws of the member State. This would make them legally binding.

See the comments of the Office under question 14.

V. Questions concerning a possible Recommendation

General provisions

In order to improve the contributions of private employment agencies to the functioning of the labour market, do you have suggestions in respect of each type of services mentioned in question 4(a)? If so, please specify. **Qu. 21**

Total number of replies: 52.

Affirmative: 18. Austria, Belgium, Chile, Côte d'Ivoire, Cyprus, Czech Republic, Ethiopia, Finland, Honduras, Hungary, Jordan, Republic of Korea, Mali, Qatar, Sudan, Switzerland, Turkey, Zimbabwe.

Negative: 29. Australia, Bahamas, Bangladesh, Bulgaria, Canada, Chad, Congo, Cuba, Denmark, Ecuador, El Salvador, Estonia, France, Ghana, Guyana, Ireland, Kuwait, Lithuania, Mauritius, New Zealand, Nicaragua, Norway, Oman, Peru, Poland, Romania, Sierra Leone, United Kingdom, United States.

Other: 5. Indonesia, Japan, Mexico, Portugal, Uruguay.

Australia. ACCI: In respect of the agencies mentioned in question 4(a)(i) and (ii), ACCI submits that the best way to improve their contribution to the functioning of the labour market is not to submit them to any special regulation which does not apply to other employers and in other industries.

Austria. Private employment agencies offer a wide range of services which might be adapted to the target group and the structure of the enterprise. Given the wide variety of these services, they should only be subject to regulations if the lawful interests of workers are at stake.

Belgium. Yes, it is suggested to take up again here the negative repercussions quoted in Chapter 5 of Report IV(1) on the role of private employment agencies in the functioning of labour markets.

Brazil. CNC: The flexibility of a Recommendation would help Members to update their legislation and practice.

CNI and CNA: No.

Chile. (i) The functioning of the labour market must be determined technically in relation to aspects such as quality and quantity of material resources (premises, office equipment) and human resource profiles (education and/or experience). (ii) The services supplied by these organizations should be supervised by a state body guaranteeing the protection of workers' rights and preventing possible abuse.

Côte d'Ivoire. It is vital that the body entrusted with monitoring private employment agencies should be strictly state controlled.

Cyprus. The director and/or the officers of a PREA must have adequate academic qualifications and experience related to the type of services provided by these agencies. A special licence should also be required for certain types of services such as the recruitment of foreign workers.

Czech Republic. Private employment agencies could also provide services such as counselling, retraining and assessment of workers for jobs offered.

Denmark. There are undoubtedly many variations in the member States as regards the scope and activities of private employment agencies; it would therefore hardly be appropriate to point to specific fields of action with a view to improving the contribution of private employment agencies to a well-functioning labour market.

DA: The most effective way to improve the contribution of TWAs to the labour market would be to recognize them as actual and/or potential contributors. Those countries in which TWAs make the least contribution are those in which their activity is restricted. In order to realize the full potential of these agencies in matching labour demand and supply, the most important step for the legislator would be to stop viewing the industry with so much suspicion.

FTF: This item might even be considered for inclusion in the Convention.

Ethiopia. If possible, the PREA should also provide vocational counselling and promote self-employment and mobility of labour.

Finland. The Recommendation could set forth specifications on vacancy notices, placement services, aptitude assessment, recruitment and labour-only contracting.

France. CFDT: The Confederation feels that if a recommendation is drafted — which it does not want *a priori* — training should perhaps be mentioned in this context. Private agencies should contribute towards and participate in government training programmes.

Honduras. Employment agencies could: step up the number of sources of information on job offers in order to increase the available flow of information on the labour market; monitor the development of needs on the labour market in order to respond rapidly to meet them and avoid delays; and carry out other activities which would make a positive contribution to the labour market.

Hungary. The efficient activities of the agencies could be ensured on the basis of a cooperation agreement between the State and private agencies.

Indonesia. The staff in the private employment agencies should attend the training courses held for the staff in the public employment services.

Japan. See question 4(a).

ZENROREN: Priority should be given to the public employment services.

Jordan. There should be mutual recognition of countries having ratified the Convention.

Federation of Chambers of Commerce in Industry: No.

Amman Chamber of Commerce: Yes.

Mali. Assistance and cooperation between the public employment services and private agencies; a partnership to promote private agencies.

Mexico. The type of services that can be provided by private agencies should be precisely defined, with the exception of the facilities or restrictions that individual governments wish to establish.

New Zealand. When looking at contributions to the labour market, the responsibilities of all employers and training providers should be considered, regardless of who they are.

Portugal. CCP: The vast differences in the contributions of temporary employment agencies in each country may be attributed to the varying local restrictions on their expansion.

Qatar. 4(a)(i) Private employment agencies should carry out surveys and compile data on the supply and demand situation in the labour market and propose solutions for labour market policies. 4(a)(iii) Basic training which helps the worker find a suitable job.

Spain. CEOE: The Recommendation should specify the different types of (i) and (ii), described on pages 26-31 of the Report IV(1), in order to provide guidance on possible exceptions to the general principles distinguishing between these typologies — for example, as regards authorization, control, the free nature of the services, etc.

Sudan. Organize the relationship between the competent authority — the labour department — and the private employment agencies.

Switzerland. The Recommendation might recognize the positive role that other bodies could play in contributing to an optimal functioning of the labour market.

SVUTA-FSETT: The most effective means of enhancing the TWAs' contribution to the labour market would be to recognize them as effective and/or potential service suppliers.

Turkey. They should be incorporated into the machinery for determining labour policy.

United States. AFL-CIO-CLC: The contribution and participation of private employment agencies in government training schemes. However, this in no way suggests that AFL-CIO-CLC is in favour of a set of recommendations.

Zimbabwe. There is need for a clear policy and regulations to protect jobseekers, workers and employers against abuses by private employment agencies e.g. over-charging, discrimination against jobseekers on the grounds of race, sex, etc.

Most governments, as well as the employers' organizations, did not have any suggestions to make on ways to improve the contributions of private employment agencies to the functioning of the labour market. The workers' organizations pointed out that they were not in favour of a Recommendation.

This subject must be considered in the context of the definition of a "private employment agency" (question 4(a)) and its legal status (question 7). In the light of the replies received to these questions, it would seem that two provisions might usefully supplement the text proposed for the Convention. Indeed, many replies stressed that provision should be made for the participation of employers' and workers' organizations in the formulation and implementation of provisions to give effect to the Convention and the importance of improving professional practices. Both

these considerations have been incorporated in the general provisions of the proposed Recommendation (Paragraph 2).

Protection of workers

Qu. 22 *Should the Recommendation provide that the competent authority should combat unfair advertising practices such as misleading advertisements for non-existent jobs?*

Total number of replies: 63.

Affirmative: 60. Australia, Austria, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Malaysia, Mali, Mauritius, Mexico, New Zealand, Nicaragua, Norway, Oman, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Slovakia, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 1. Lithuania.

Other: 2. Argentina, Peru.

Argentina. (questions 22-32) It would be useful if the new instrument were supplemented by a Recommendation containing a set of provisions guaranteeing the collaboration and contribution of employment agencies to the functional improvement of the labour market. The main guidelines would be the protection of workers against possible abuses committed by private agencies through selection practices which are contrary to the protection of individual persons and protection against possible unfair practices by private agencies.

UIA: (questions 22-32) In general, the UIA would like to state that many of the provisions contained in this questionnaire for inclusion in the proposed Convention should be included rather in the proposed Recommendation.

CGT: Yes. The Convention should establish penalties for such cases, which could include the closing down of private agencies and criminal proceedings for fraudulent conduct.

Australia. ACCI: Unfair advertising practices should be addressed through domestic laws on trade practices, unfair conduct, consumer rights and the like. A Recommendation should not provide for any extra restrictions in this area, targeting private employment agencies. Codes of conduct developed by the private employment agency industry at a national and international level have also been effective in combating such unfair practices.

Austria. The Recommendation should stipulate that all forms of unauthorized placement should be penalized (in particular telephone services, advertising on Internet, placements presented as a hiring out of workers).

VÖI: (questions 22-24) Inter-state common law should be applied here.

Belgium. Yes. The inspection services should be able to supervise this aspect of the problem.

Brazil. CNC, CNI and CNA: Yes.

Canada. In accordance with national practice.

Czech Republic. KUK: This provision could also be included in the Convention.

CMK OS: It would evidently be difficult to choose appropriate and effective means for combating unfair advertisement practices.

Denmark. DA: Yes, in this respect DA would draw the ILO's attention to its code of conduct.

FTF: This item might be incorporated into the Convention.

Finland. SAK, STTK and the AKAVA: From the standpoint of the workers' organizations, provisions on the protection of workers should be included in the Convention, rather than in the Recommendation.

France. CFDT: This provision should be contained in the Convention.

Germany. DGB: Yes.

Hungary. The Government regards it as necessary to indicate in the Convention the need for action against unfair advertisements.

Japan. To restrict false advertisements etc. constitutes the basis not only for the protection of workers but also for the safety of transactions.

Republic of Korea. The authority should also adopt laws to penalize the user enterprise, employment agencies and advertisement companies who carry out misleading advertisements offering positions.

Mali. Provision should be made for the application of penalties if there is an infringement of the code of conduct and legislation in the area.

Mexico. When setting up control mechanisms for employment agencies, these should include procedures to prevent misleading advertisements. The competent authority should impose penalties in the event of infringements against the law — and these should be specified in the proposed Recommendation.

New Zealand. New Zealand agrees that such practices by employers, employment agencies or any other group should be outlawed, but that each country should do so in a way consistent with its national practice.

Norway. LO: Should be part of the Convention.

Peru. The Government states that these practices are already prohibited in Peruvian legislation.

South Africa. BSA: Yes.

Spain. CEOE: Yes.

Sweden. The Convention or Recommendation should provide for effective methods for combating misleading marketing of private employment agencies — but the way these methods are applied should be left for national decision.

Turkey. Yes, and this should be included in the Convention.

United States. Competent authorities should have the capacity to "combat unfair advertising practices such as misleading advertisements for non-existent jobs" in the same way that they need recourse to effectively respond to complaints.

USCIB: The method for doing so should be at the discretion of each Member.

Questions 22 to 26 cover various aspects of the protection of workers. Their inclusion in the Recommendation is a direct outcome of the discussions at the 81st Session (1994) of the Conference on the "poor and unethical practices" of certain private employment agencies. Indeed, many governments and workers' organizations are worried about the abuses committed by some of these agencies. In particular, the

workers' organizations have criticized on many occasions the interference of certain agencies when workers were exercising their right to strike.

After examining the replies in depth, the Office proposes to spell out a list of measures to prevent and eliminate unethical practices in the proposed Recommendation. The whole section on the protection of workers (Paragraphs 3 to 9) concerns these measures, and has been drafted not only in the light of the replies to questions 22 to 26, but also taking into account comments under other headings (for example, in reply of question 11).

Qu. 23 *Should the Recommendation identify protective measures other than those mentioned in questions 9 to 14? If so, please specify.*

Total number of replies: 54.

Affirmative: 10. Belgium, Chile, Colombia, Côte d'Ivoire, Indonesia, Japan, Jordan, Mexico, Oman, Sudan.

Negative: 40. Australia, Austria, Bahamas, Bulgaria, Canada, Chad, China, Congo, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Ethiopia, Finland, France, Ghana, Guyana, Hungary, Ireland, Republic of Korea, Kuwait, Lithuania, Malaysia, Mali, Mauritius, New Zealand, Nicaragua, Norway, Peru, Poland, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Turkey, United Kingdom, United States, Zimbabwe.

Other: 4. Argentina, Bangladesh, Honduras, Uruguay.

Argentina. CGT: Provision should be made for a system of control of the agency and the user enterprise, as regards measures to guarantee the job stability of workers in these agencies which often — in collaboration with the user enterprises — cover up the jobs of workers placed to avoid paying social security contributions.

Bangladesh. Protective measures as mentioned in questions 9 to 14 may be considered for inclusion in the Recommendation.

Belgium. It would seem that the major harm caused by fee-paying employment agencies to the protection of workers is the precarious working conditions they create. Indeed, the marketing aspect which underlies fee-paying agencies, and their ability to meet at all costs the needs of flexibility in enterprises, does lead to a turnover of workers.

Wallon Region: Measures could be advocated in the Recommendation such as: the banning of certain activities or certain fee-paying employment agencies; "preconditions" for resorting to particular forms of hiring out of labour; a ban on preventing a user enterprise from directly recruiting a worker if both parties so agree to this arrangement; the establishment of a time period beyond which the contact of a temporary worker may not be extended within the same user enterprise; a ban on dismissing a worker who has been placed for a specific period — determined after his or her placement — unless both parties agree.

Brazil. CNC, CNI and CNA: No.

Chile. Special measures should, naturally, be envisaged with a view to preventing the unscrupulous dispatching of workers abroad.

Congo. Although the measures of protection listed under questions 9 to 14 are not exhaustive, they are likely to constitute a sound basis for any policy concerning the monitoring of private employment agencies.

Côte d'Ivoire. The competent authority must be informed before the final or temporary closure of a private employment agency.

UGTCI: Measures concerning the protection of workers, such as for example a ban on temporary work agencies providing strike breakers, should be contained in the Convention and not in the Recommendation.

France. CFTD: There should be a ban on providing strike breakers which should also be contained in the Convention.

Ireland. Protective measures for workers should be a matter for the national authorities and should not form part of a Recommendation on employment agencies.

Japan. It should be stipulated that private employment agencies should be prohibited from handling inappropriate recruiting, jobseeking or employment services which violate law.

Jordan. FCCI: No.

Portugal. CCP: Temporary workers should be provided with full information on the terms and conditions of each temporary mission; they should be paid weekly, fortnightly or monthly as preferred by the workers; temporary workers should not be assigned to workplaces during strikes; workers should not have to pay any commission; temporary workers should, if possible, be trained in their occupational activities.

South Africa. BSA: Agencies should state fee structures and terms of service; psychological testing by qualified staff.

Switzerland. CSC/CNG: Yes.

United Kingdom. BIU: A ban must be imposed upon TWAs being used while workers are on strike.

See the comments of the Office under question 22.

Should the Recommendation provide that the measures referred to in question 10 could include: **Qu. 24**

- (i) *a ban on drawing up vacancy notices or job offers in ways that, directly or indirectly, result in discrimination on grounds prohibited under the Convention?*
- (ii) *a ban on recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered?*

Subparagraph (i)

Total number of replies: 59.

Affirmative: 52. Argentina, Australia, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Jordan, Republic of Korea, Kuwait,

Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Slovakia, Sudan, Sweden, Turkey, United States, Uruguay, Zimbabwe.

Negative: 5. Japan, New Zealand, Norway, Poland, United Kingdom.

Other: 2. Austria, Ireland.

Subparagraph (ii)

Total number of replies: 59.

Affirmative: 48. Argentina, Australia, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Honduras, Hungary, Indonesia, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Sierra Leone, Slovakia, Sudan, Sweden, Turkey, Uruguay, Zimbabwe.

Negative: 8. Japan, Kuwait, New Zealand, Norway, Poland, Sri Lanka, United Kingdom, United States.

Other: 3. Austria, Ireland, Switzerland.

Argentina. CGT: (ii) The bans are necessary since their absence would lead to irrational discrimination against the workers contrary to the main objective which is to ensure free access to the labour market.

Australia. (ii) It might be difficult to determine the future relevance of the client's personal details when recording them. Furthermore, governments might find other details, not strictly relevant to the client's job placement, useful in planning labour market policy. In this context the Recommendation should not ban the collection and communication of personal data (particularly of a non-identifying nature) to public bodies in accordance with a duty explicitly established by statute.

ACCI: (i) No. This is a matter for existing general discrimination provisions which apply to all employers, and should not be addressed in a Recommendation. (ii) No.

Austria. The Recommendation should provide that in principle data should not be handed on if it has nothing to do with the job requested.

Belgium. Wallon Region: (i) Yes. Furthermore this should be provided for in the Convention.

Brazil. CNC and CNI: (ii) Yes.

CNA: (i) Yes.

Denmark. DA: (i) TWAs should be subject to the same requirements as other employers vis-à-vis discrimination and data protection as laid down in national and/or international law.

FTF: (i), (ii) This item might be considered for inclusion in the Convention.

Finland. TT and LTK: (i) The references to discrimination and protection of personal data appearing in question 24 are general issues, and the employers' organizations are against their inclusion in the Convention.

France. CFDT: (i) The provisions contained in questions 24 to 26 should be in the Convention.

Germany. (ii) Concerns data protection. The provision should therefore be included in the Convention.

DGB: (ii) Given the high risk of abuse in this area, protective measures should also be contained in the Convention.

Ireland. (i) Employment agencies should be subject to the national legislation in the same way as any other employer or business.

Japan. (ii) This would ban even information obtained accidentally. This is an excessive regulation.

ZENROREN: (i) Yes.

Jordan. Federation of Chambers of Commerce and Industry: (ii) No.

Amman Chamber of Industry: (ii) Yes.

Kuwait. (ii) No, because only the employer is able to evaluate the importance of the data given and whether or not he or she should place them in the employee's file.

Mexico. (i) Advertising that may lead to discrimination or any danger for workers should also be penalized. (ii) Yes, specifying by way of example what that data could be.

New Zealand. (i) New Zealand believes that anti-discrimination laws should have general application. See question 1.

Norway. LO: Should be part of the Convention.

Poland. OPZZ and Solidarnosc: Yes.

Portugal. (ii) The CIP disagrees, and believes that the measures to combat discrimination should be the responsibility of the national authorities.

CCP: (ii) Temporary employment agencies should be subject to the same obligations as other employers.

South Africa. BSA: No, same as other businesses.

Spain. CEOE: (i) Yes as regards "direct" results. Perhaps there should be a different treatment as regards "indirect" results. Given the difficulties of defining the concept, perhaps reference should be made to codes of ethics and practice, rather than to prohibition. (ii) It is very difficult to determine *a priori* what data are or are not necessary for each job.

Sri Lanka. (ii) Not necessary.

Switzerland. (ii) See question 10.

CSC/CNG: (ii) Yes.

SVUTA-FSETT: (ii) The same national and/or international anti-discrimination and data protection regulations should apply to TWAs as to other employers.

VSA: (ii) Any discrimination in vacancy notices or job offers should be prohibited. The recording of unnecessary data should be banned.

Turkey. (i)-(ii) This measure should be included in the Convention.

United Kingdom. CBI: (i)-(ii) Yes.

BIU: (i)-(ii) Yes, to be included in the Convention.

United States. (ii) The matter of what is pertinent to judging the aptitude of applicants for jobs is best left to the discretion of Members and the market place, within the context of non-discrimination provisions.

USCIB: (ii) Yes. However, subject to national laws on discrimination and privacy, PREAs should be the judges of what information is necessary for the accurate matching of jobseekers with jobs.

AFL-CIO-CLC: (ii) Yes.

Zimbabwe. (i)-(ii) The ban would curb all sorts of unfair employment practices.

See the comments of the Office under questions 10 and 12.

Qu. 25 *Should the Recommendation provide that the competent authorities should take measures to promote the utilization of adequate selection methods by private employment agencies? Please specify these measures.*

Total number of replies: 57.

Affirmative: 27. Bangladesh, Belgium, Chile, Colombia, Congo, Cyprus, Ecuador, El Salvador, Ethiopia, Ghana, Guyana, Indonesia, Republic of Korea, Kuwait, Mali, Mexico, Nicaragua, Oman, Peru, Philippines, Portugal, Qatar, Romania, Sierra Leone, Sri Lanka, Uruguay, Zimbabwe.

Negative: 25. Australia, Austria, Bahamas, Bulgaria, Canada, Cuba, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Jordan, Malaysia, Mauritius, New Zealand, Norway, Poland, Sudan, Sweden, Switzerland, Turkey, United Kingdom, United States.

Other: 5. Argentina, Chad, Côte d'Ivoire, Finland, Japan.

Argentina. CGT: Yes. The competent authority should monitor the staff selection methods to prevent any kind of arbitrary difference. In the same way the proposed Convention could establish the most appropriate and effective methods for determining a worker's capacities.

Australia. It is sufficient to ensure that workers are treated without discrimination.

ACCI: No. Private employment agencies should have the same relationships with their employees (and potential employees) as other employers. This includes freedom in the right to select and allocate work assignments.

Austria. This should not be contained in the Recommendation, because the word "adequate" cannot be defined in a specific way.

Bangladesh. Yes. Measures may be: (a) registration of jobseekers; (b) recording of notified vacancies; (c) referral; (d) placement; and (e) a statement in this regard to be sent every month to the government authority controlling the employment services in the country.

Belgium. Provision should be made for the following measures: (i) the expenses of selection tests should be incumbent upon the employer; (ii) candidates not selected should be informed within a reasonable time limit of the decision taken concerning them; (iii) candidatures should not be dealt with in a discriminatory way; (iv) the private life of candidates should be respected during the selection procedure; (v) any information concerning the candidate should be dealt with confidentially by the employer; (vi) if the selection procedures include practical tests, these should not last longer than necessary to test the candidates' skills.

Brazil. CNC and CNI: No.

CNA: Yes.

Canada. It would be more appropriate for the private employment agencies themselves to ensure the utilization of adequate selection methods, e.g. through professional codes of conduct.

Chile. Yes, by supplying technical standards.

Congo. Yes, these measures could be jointly agreed upon as part of the cooperation between the public services and private agencies; generally speaking, they should promote free and transparent services, with the understanding that there should be no discrimination in access to employment.

Cyprus. The agencies could be required or encouraged to train their staff in selection methods and facilitate such training.

Czech Republic. Yes, but only in a general way, e.g. "in harmony with legal regulations, moral, ethical, professional and similar customs" of a State concerned.

KUK: This would mean interfering in the work of private agencies.

CMK OS: Methods of selection should not undermine the personal integrity of workers and erode their dignity; they should also preclude any possibility of gaining information on workers which is unrelated to their attempts to find a job. Violations of procedures defined in this way should be penalized (penalties, withdrawal of licence).

Denmark. DA: The selection methods by TWAs should be subject to the same legislation as other employers.

FTF: This item might be considered for inclusion in the Convention.

Finland. Public employment services should not be assigned responsibility for upgrading private employment services.

SAK, STTK and AKAVA: Yes.

Germany. At present, it is not clear that additional regulations are necessary over and above those already established by private law and public law as regards commercial activity.

Hungary. The choice of the applicable method of selection falls within the scope of decision of the agency.

Indonesia. Adequate selection criteria are workers' temperament, aptitude, attitude, personality, ability and dexterity.

Ireland. The methods utilised by employment agencies are best governed by internal codes of practice.

Japan. This should be provided as regards the services stated in 4 (a) (i) — but concrete measures should be left to the decision by each Member.

ZENROREN: Yes.

Jordan. Amman Chamber of Industry: Yes, the method of assessment.

Republic of Korea. The competent authority should take measures to promote the contribution of the private employment agencies for improved functioning of the labour markets.

Malaysia. Agencies should develop their respective competence and update appropriate methodology to excel in their vocation.

Mali. The agencies' selection methods should be based on a partnership which strives to work in the common interest with a view to ensuring a sound functioning of the labour market; they should also be based on respect for labour laws and regulations.

Mexico. It could even be provided that as far as general aspects are concerned, the placement procedures should be in line with the standards set by the public employment service.

New Zealand. If the methods used by a private employment agency do not meet the needs of an employer or employee, the latter have the opportunity to complain to the agency or to use another agency.

Norway. LO: Should be part of the Convention.

Oman. Vocational guidance and assessment of skills.

Peru. Appropriate measures could be: (a) permanent supervision of placement methods used; and (b) supervision of selection methods used.

Poland. Solidarnosc: Yes. The collection of information on existing methods used by private employment agencies; organization of a data system on the basis of the information collected; identification of the most effective methods and their conversion into suitable national regulations.

Portugal. Private employment agencies could be encouraged to use appropriate selection methods by strengthening their technical capacity and by including selection and vocational guidance specialists amongst their collaborators.

CCP: Selection methods should be subject to the same legislation as in the case of any other enterprise.

Qatar. Yes, by establishing selection methods or drawing up criteria approved by the competent authority.

Romania. For example, a system of dialogue on and certification of the selection methods used by private employment agencies.

Sierra Leone. Curriculum vitae supported by the relevant certificates and all other personal data of the applicant(s) submitted to the competent authority.

South Africa. BSA: No.

Spain. CEOE: Yes, through the establishment of professional codes of ethics or practice.

Sweden. No. This should be regulated by the branch concerned.

Switzerland. The Government feels that it is up to the private agencies to choose adequate selection methods.

CSC/CNG: Yes.

SVUTA-FSETT: The selection procedures adopted by the TWAs should be subject to the same legislation as those of other employers.

Turkey. It should be left to the agencies themselves.

TISK: The member States' legislation should identify adequate selection methods to be utilized by private employment agencies. The competent authority might take the following measures to promote the utilization of adequate selection methods by private employment agencies: avoidance from any unnecessary restrictions on related activities; cooperation on selection methods; data transfer procedures; encouragement to automation.

TÜRK-IS: Yes.

United Kingdom. BIU: Yes, to be included in the Convention.

United States. Within the context of non-discrimination provisions, this is a function of the market place.

USCIB: Authorities may establish lists of standards that cannot be used in selection, such as discrimination. But they should not establish lists of standards that must be used.

AFL-CIO-CLC: Yes.

Uruguay. This should be part of the Convention.

Zimbabwe. The competent authority should carry out regular inspections of the private employment agencies, e.g. inspection of records of interviews, aptitude tests held and placements.

A slight majority of replies were in favour of the competent authority taking measures to promote the utilization of adequate selection methods by private employment agencies. The majority of workers' organizations wanted to see such a provision in the international instrument. A number of governments and the majority of employers' organizations did not want to see measures to promote the use of adequate selection methods by private employment agencies included in the Recommendation. However, the Office concurred with the majority of replies and included this provision.

Should the Recommendation provide that at the end of the assignment of an employee made available to the user, a private employment agency should not prevent:

Qu. 26

- (a) *the user enterprise from hiring the employee?*
- (b) *the employee from accepting a contract from the user?*

Subparagraph (a)

Total number of replies: 54.

Affirmative: 44. Argentina, Austria, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, Congo, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Japan, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Peru, Portugal, Qatar, Romania, Sierra Leone, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 8. Australia, Indonesia, Ireland, Kuwait, Norway, Oman, Poland, Sudan.

Other: 2. Hungary, New Zealand.

Subparagraph (b)

Total number of replies: 54.

Affirmative: 42. Argentina, Bahamas, Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, Congo, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Republic of Korea, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Peru, Portugal, Qatar, Romania, Sierra Leone, Sri Lanka, Sweden, Thailand, Turkey, United Kingdom, United States, Uruguay, Zimbabwe.

Negative: 7. Australia, Indonesia, Ireland, Kuwait, Norway, Oman, Poland.

Other: 5. Côte d'Ivoire, Hungary, Japan, Jordan, New Zealand.

Australia. (b) This should be a contractual matter between the agency, employee and employer, respectively. A prohibition on such practices might discourage agencies from investing in training of staff with skills in short supply or from undertaking expensive and far-reaching recruitment processes to fill specific skill gaps.

ACCI: (a)-(b) Yes.

Belgium. (a) Yes, without further expenses or compensation.

Wallon Region: (a) The principle on which the question is based is vital from many respects. Any reply must necessarily therefore be qualified: (i) the ban should also mean that workers are entirely free to change intermediaries and therefore private employment agencies; (ii) the ban should be drafted in unequivocal and absolute terms; (iii) the ban should be contained in the Convention itself and made one of the most vital provisions for the protection of workers.

Brazil. CNC and CNI: (b) Yes.

CNA: (a) Yes.

Congo. (a)-(b) Yes, as the final objective is the recruitment of the employee, the latter must determine with the user enterprises the condition of his or her recruitment by referring to the legislation and applicable collective agreement.

Côte d'Ivoire. (b) Temporary work agencies are excluded from the scope of fee-paying employment agencies.

Czech Republic. (b) The user enterprise should pay the agency an appropriate amount for the service.

Denmark. (a) It is the policy of the Danish Government to support efforts to ensure that as many recruitments as possible take place with a view to permanent employment.

FTF: (a)-(b) This item might be considered for inclusion in the Convention.

Finland. (b) If at all possible, this ban should be laid down in the Convention. Private labour-only contracting agencies should also adopt the goal of promoting the permanent placement of employees.

Germany. DGB: (a)-(b) Yes. This should also be regulated in the Convention.

Hungary. (a)-(b) This would be impossible to prevent — even if there was no provision of this nature in the Convention.

Ireland. (a) This would interfere with market forces.

Japan. (b) It would be sufficient to include such a provision as a sentence to be added to (a) above.

Jordan. Federation of Chambers of Commerce and Industry: (a) No. (b) The ban should not be authorized.

Amman Chamber of Industry: (a) Yes.

Lebanon. (a) The Recommendation could contain this text, subject to the legal provisions in force in this respect in each country.

Mexico. (b) The proposed Recommendation should exclude from the activities of private agencies the subcontracting of personnel for the purposes of " hiring " them out to third parties.

Norway. LO: (a)-(b) Should be part of the Convention.

Peru. (b) The Government is in agreement — especially if this would contribute to strengthening the principle of freedom of contract laid down in its legal system.

Poland. OPZZ and Solidarnosc: (a)-(b) Yes.

South Africa. BSA: Yes, against agreed compensation.

Spain. CEOE: (a)-(b) Yes.

Sweden. (a) Yes, in the sense that the usual laws governing the employer-employee relationship should also apply in this field. A provision to this effect ought perhaps to be in the Convention.

Switzerland. VSA: (b) Precise rules should be established in respect of the period after which a so-called user enterprise might recruit the worker directly. If a user enterprise were not in a position directly to hire a worker supplied to it, the private employment agencies would have no positive impact upon the labour market.

United Kingdom. CBI: (a) Yes, but it should be recognised that in this instance PREAs would be entitled to charge a fee.

BIU: (a)-(b) Yes, to be included in the Convention.

Zimbabwe. The final decision to hire the employee and to take up the job offered should be left to the employer and the jobseeker concerned.

See the comments of the Office under question 22.

Relationships between the public employment service and private agencies

- (1) *Should the Recommendation provide that the competent authority should specify the different means for establishing the complementarity between the public employment service and private employment agencies, such as:* Qu. 27
- (a) *pooling of labour market information?*
 - (b) *division of markets?*
 - (c) *launching of joint projects, for example in training?*
 - (d) *subcontracting of certain projects by the public employment services to private employment agencies, such as for the integration of the long-term unemployed?*
 - (e) *training of staff?*
 - (f) *exchanges of vacancies?*
 - (g) *sharing of offices?*
 - (h) *participation in committees or councils?*
- (2) *Please specify other possible means.*

Paragraph (1), subparagraph (a)

Total number of replies: 60.

Affirmative: 46. Austria, Bahamas, Bangladesh, Belgium, Canada, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Ghana, Guyana, Hungary, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Lithuania, Mali, Mauritius, Mexico, Nicaragua, Norway, Oman, Peru, Philippines, Qatar, Romania, Saudi Arabia, Sierra Leone, Sri Lanka, Switzerland, Turkey, Uruguay, Zimbabwe.

Negative: 12. Australia, Bulgaria, Cuba, Germany, Ireland, Malaysia, New Zealand, Poland, Portugal, Sudan, Sweden, United States,

Other: 2. Argentina, United Kingdom.

Paragraph (1), subparagraph (b)

Total number of replies: 50.

Affirmative: 26. Bahamas, Bangladesh, Chad, Colombia, Congo, Costa Rica, Czech Republic, El Salvador, Estonia, Ethiopia, Ghana, Guyana, Republic of Korea, Kuwait, Lithuania, Mauritius, Mexico, Nicaragua, Norway, Peru, Romania, Sierra Leone, Sri Lanka, Turkey, Uruguay, Zimbabwe.

Negative: 22. Australia, Austria, Belgium, Bulgaria, Canada, China, Cuba, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Japan, Malaysia, New Zealand, Oman, Poland, Portugal, Sweden, United States.

Other: 2. Argentina, United Kingdom.

Paragraph (1), subparagraph (c)

Total number of replies: 54.

Affirmative: 36. Bahamas, Bangladesh, Belgium, Canada, Chad, Chile, Colombia, Congo, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, Ghana, Guyana, Japan, Jordan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Nicaragua, Norway, Oman, Peru, Philippines, Romania, Sierra Leone, Sri Lanka, Turkey, Uruguay, Zimbabwe.

Negative: 15. Australia, Bulgaria, China, Cuba, France, Germany, Hungary, Ireland, Malaysia, Mexico, New Zealand, Poland, Portugal, Sweden, United States.

Other: 3. Argentina, Austria, United Kingdom.

Paragraph (1), subparagraph (d)

Total number of replies: 52.

Affirmative: 35. Bahamas, Bangladesh, Belgium, Canada, Chad, China, Colombia, Congo, Côte d'Ivoire, Costa Rica, Czech Republic, Denmark, El Salvador, Estonia, Ethiopia, Finland, Ghana, Guyana, Japan, Republic of Korea, Kuwait, Lithuania, Mauritius, Mexico, Nicaragua, Norway, Oman, Peru, Qatar, Romania, Sierra Leone, Sri Lanka, Turkey, Uruguay, Zimbabwe.

Negative: 15. Australia, Austria, Bulgaria, Cuba, Cyprus, France, Germany, Hungary, Ireland, Malaysia, New Zealand, Poland, Portugal, Sweden, United States.

Other: 2. Argentina, United Kingdom.

Paragraph (1), subparagraph (e)

Total number of replies: 52.

Affirmative: 33. Austria, Bahamas, Bangladesh, Belgium, Chad, China, Congo, Costa Rica, Cyprus, Czech Republic, Estonia, Ethiopia, Ghana, Guyana, Hungary, Indonesia, Japan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Nicaragua, Norway, Oman, Peru, Qatar, Romania, Saudi Arabia, Sierra Leone, Sri Lanka, Turkey, Uruguay.

Negative: 16. Australia, Bulgaria, Cuba, Denmark, Finland, France, Germany, Ireland, Malaysia, Mexico, New Zealand, Poland, Portugal, Sweden, United States, Zimbabwe.

Other: 3. Argentina, Canada, United Kingdom.

Paragraph (1), subparagraph (f)

Total number of replies: 53.

Affirmative: 38. Austria, Bahamas, Bangladesh, Belgium, Chad, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ethiopia, Finland, Germany, Ghana, Guyana, Indonesia, Japan, Jordan, Republic of Korea, Kuwait, Lithuania, Mali, Mauritius, Mexico, Nicaragua, Norway, Oman, Peru, Romania, Saudi Arabia, Sierra Leone, Sri Lanka, Turkey, Uruguay, Zimbabwe.

Negative: 12. Australia, Bulgaria, Cuba, France, Hungary, Ireland, Malaysia, New Zealand, Poland, Portugal, Sweden, United States.

Other: 3. Argentina, Canada, United Kingdom.

Paragraph (1), subparagraph (g)

Total number of replies: 47.

Affirmative: 24. Bahamas, Bangladesh, Congo, Costa Rica, Ethiopia, Ghana, Guyana, Japan, Republic of Korea, Kuwait, Lithuania, Mauritius, Mexico, Nicaragua, Norway, Peru, Romania, Sierra Leone, Sri Lanka, Chad, Czech Republic, Turkey, Uruguay, Zimbabwe.

Negative: 20. Australia, Austria, Belgium, Bulgaria, China, Cuba, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Malaysia, New Zealand, Oman, Poland, Portugal, Sweden, United States.

Other: 3. Argentina, Canada, United Kingdom.

Paragraph (1), subparagraph ((h))

Total number of replies: 52.

Affirmative: 36. Bahamas, Bangladesh, Belgium, Chad, China, Colombia, Congo, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Ghana, Guyana, Japan, Republic of Korea, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Norway, Oman, Peru, Philippines, Qatar, Romania, Sierra Leone, Sri Lanka, Turkey, Uruguay, Zimbabwe.

Negative: 13. Austria, Bulgaria, Cuba, Finland, France, Germany, Hungary, Ireland, New Zealand, Poland, Portugal, Sweden, United States.

Other: 3. Argentina, Canada, United Kingdom.

Paragraph 2

Total number of replies: 9.

Affirmative: 4. Australia, Ethiopia, Mexico, Sierra Leone.

Negative: 5. Costa Rica, Cyprus, Japan, United Kingdom, United States.

Other: 0.

Argentina. CGT: (c), (e), (f) and (h) Yes. (a), (b), (d) and (g) No.

Australia. (1) No, although it might suggest that member States could do so. The specification of a rigid framework by the relevant authority in any of these areas could limit potential development of the labour market and the free flow of information. (2) Evaluation by an independent authority of PES and PREA to identify best practice.

ACCI: (1) (a)-(h) Yes.

Austria. (b) The formula concerning the division of markets is too restrictive and could call into question the role of private employment agencies. (c) The launching of joint projects could be contained in the Recommendation, provided that this measure only concerned agents who were not part of the public employment services and that it should be in the common interest. (d) This should not be contained in the Recommendation because the integration of persons difficult to place should, as in the past, be incumbent upon the public employment services. (e) This has no meaning, because private employment agencies and public employment services usually operate in different sectors. (f) The exchange of information on job vacancies is absolutely vital because the private employment agencies might, as the case may be, take over from the public employment services, and vice versa. (h) This is not useful if some sort of consultations procedure involving workers' and employers' representatives is provided for on certain important issues — both in the private placement agencies and in the public employment services.

Belgium. (f) Yes, provided that there is still only one responsible body and that the source is protected. (2) Joint lists and codes of conduct (e.g. for the professions, skills, schooling, etc.).

Wallon Region: The question does not seem to have been adequately formulated: In the Recommendation, it is not a matter of providing "that the competent authority should specify ..." but to specify that this authority should bring about the complementarity envisaged. Under the Recommendation, it is not only a matter of complementarity but also of competition and cooperation. (d) The subcontracting of certain projects by the public employment services to private employment agencies on a contractual basis is undeniably one of the forms that complementarity between both these actors might take.

Canada. (c) There should be voluntary partnership and joint projects between PES and PREAs to meet labour market needs, when necessary. (d) The services of a PREA should be used to help the PES to find jobs for unemployed people, when it is considered to be the most cost-efficient way to proceed. (e) Market forces should dictate the needs to train PES staff.

Chile. In Chile, given the widespread role played by private agencies as intermediaries on the national labour market, it does not appear necessary to guarantee complementarity between the public employment service and private employment agencies.

China. (c) There are no such problems in China, but the relationship between the two types of agencies should be specified. In view of the difficulties in making a clear distinction between the two types of agencies, the Government proposes making no provisions in the Recommendation.

Costa Rica. (a) Yes. Cooperation and complementarity of this kind should be backed up by specific means such as: the exchange of information; joint strategies to extend coverage and improve the services provided; mutual assistance and technical cooperation.

Côte d'Ivoire. UGTCL: (b), (c), (e), (g) Yes.

Cyprus. PEO: (a)-(h) Yes.

Czech Republic. These means for establishing the complementarity between PES and PEA should be voluntary and not regulated.

CMK OS and KUK: (b) No.

Denmark. Public and private agencies are to some extent competitors for the same market. It is, in fact, this competition which should contribute to ensuring the best possible servicing of the labour market.

DA: The Recommendation should list all of the specified items as possible means of establishing complementarity between the public employment service and the private employment agencies.

Estonia. The Confederation of Estonian Industry and Employers (ECIE). The ECIE considers that the Recommendation should provide also for (f).

Ethiopia. (2) Exchange of jobseekers; exchange of experience in matters of matching jobseekers and vacancies, placement and other activities of employment services.

Finland. Cooperation is viable only in certain branches of activity. Public and private agencies are to some extent competitors for the same market.

Germany. It is debatable in which spheres and in what way such a complementarity between public and private placement could be developed. The proposal contained in this question contains objectives which, because of their detailed nature, would rather impede the development of collaboration between both sectors, which will vary from country to country.

Indonesia. (e) The staff in the private employment agencies should attend the training courses held for the staff in the public employment services. (f) Any vacancy has to be reported to the public employment services.

Ireland. (a) The competent authorities should encourage cooperation between the private employment agencies and the public employment service. This, however, should be entirely voluntary and parameters and restrictions should not be laid down in advance. Together they should decide how best to cooperate.

Japan. (b) The public employment service has a responsibility to provide employment services to all employers and jobseekers; the functions of the public employment service should not therefore be limited to the provision of services in any specific field by dividing the labour market into one for the public employment service and the other for the private employment agencies.

ZENROREN: (a)-(h) No.

Jordan. FCCI: (b) No. (d), (e), (g), (h) Yes.

ACI: (b), (g) No. (d), (e), (g) Yes.

Lebanon. In the event that private employment agencies are officially recognized, the State might consider that employment policies should be implemented: through its official administration; through a public body with a governing board made up of representatives from private agencies and the public employment services as well as of departments and workers' and economic organizations concerned; or through other boards that the State might create.

Malaysia. (h) If appropriate and of benefit to the government. (2) Joint dialogue sessions between PES and PREA.

Mexico. (2) The means mentioned could be seen as proposals for joint and coordinated work between public and private agents, although their implementation would depend on the policies of each country and the characteristics of their institutions.

One way of enhancing coordination between the various agencies would be to set up "employment systems or councils" which, with the participation of representatives from employers' associations, training institutions and the public and private agents responsible for placement, would serve to guide action taken in association with the labour market and training: these councils would aim to make full use of labour market information, continually upgrade placement mechanisms and promote alternative forms of employment.

Norway. The expression "the competent authority should specify" should be modified to e.g. "outline", "recommend", "describe" — or other words to that effect.

Poland. OPZZ: (a), (c)-(h) Yes. (b) No.

Solidarnosc: (a)-(h) Yes.

Sierra Leone. (2) A joint consultative committee which would advise the competent authority on labour matters and members of the board of directors of the public employment services.

Slovakia. The Recommendation should in detail adjust the forms of the cooperation between the public services of employment and the private employment agencies.

South Africa. BSA: No.

Spain. CEOE: (a), (e), (e)-(h) Yes. (b), (c) No.

CEOE: (2) Rather than a division of markets, the instrument should refer to different levels or forms of cooperation between the public employment service and private employment agencies, with account being taken of economic circumstances.

Sudan. The means for establishing complementarity should be adapted to the specific conditions in each State.

Switzerland. In the Government's opinion, the Recommendation should merely list all the means by which complementarity could be established and the competent authority should remain free to specify these or adapt them according to circumstances or developments in the national situation.

Turkey. TÜRK-İS: (a), (d), (f), (g) No.

United Kingdom. (a)-(h) The list of activities are all useful/desirable and some are already practised in the United Kingdom. Trust and cooperation would, however, seem to be a better approach than regulation by the competent authority.

BIU: (a)-(h): Yes, to be included in the Convention.

United States. While the suggested "means for establishing the complementarity between the public employment service and private employment agencies" is very interesting, and covers a wide range of approaches, it would be more helpful to offer this list as a partial range of options in support of question 15.

USCIB: (a) PREA collectively are successful in placing workers in jobs, generally much more so than public agencies, which do not have the same, constant, daily, urgent motivation to seek out this kind of information. To require PREA to make this information available to others would be "to kill the goose that lays the golden egg". (c)-(e), (h) Yes.

AFL-CIO-CLC: (a)-(h) Yes.

Zimbabwe. (2) Another possible means would be to establish regular consultations between representatives of private employment agencies and the public employment service on ways to improve employment policies.

Questions 27 to 31 concern relationships between the public employment service and private agencies and have been taken up under the provisions of the Recommendation. The replies received must be viewed in the light of the Office comments under question 15 and Article 10 of the text proposed for the Convention.

Most of the proposed measures met only with a lukewarm reaction on the part of the governments. Certain aspects, such as the division of markets, were deemed scarcely appropriate. The governments seemed to prefer measures promoting the transparency and fluidity of labour markets. For instance, there was relatively strong support in the replies for an improved exchange of information on the labour market. However, the governments were reluctant to institutionalize this and make cooperation between the public and private services mandatory.

The employers' organizations doubted that the proposed measures could improve the functioning of labour markets. The only exception to this rule was self-regulation, which was also backed by several governments.

The workers' organizations supported most of the provisions, with the exception of self-regulation. They would have liked to see these measures included in the Convention. They advocated the active participation of the social partners in the establishment of measures, especially those designed to stem the fragmentation of labour markets.

Given the large number of negative replies and the arguments put forward, the Office deleted several provisions. It also changed the other aspects in order to structure better this section of the Recommendation and to make it supplement the provisions in the Convention. This is reflected in Paragraphs 10 to 12 of the proposed text.

- (1) *Should the Recommendation provide that a national authority should be entrusted with the responsibility for the implementation of a national policy on organizing the labour market and for the respective contributions of the public employment service and private employment agencies?* **Qu. 28**
- (2) *If so, should this national authority take the form of a council with the participation of representatives from the public employment service and from private employment agencies as well as from the most representative organizations of employers and workers?*

Paragraph 1

Total number of replies: 60.

Affirmative: 43. Austria, Bahamas, Bangladesh, Belgium, Bulgaria, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, France, Ghana, Guyana, Indonesia, Japan, Jordan, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Oman, Peru, Philippines, Portugal, Qatar, Romania, Sierra Leone, Slovakia, Sri Lanka, Sudan, Thailand, Turkey, United States, Zimbabwe.

Negative: 12. Australia, Denmark, Finland, Germany, Hungary, Ireland, Mexico, Norway, New Zealand, Poland, United Kingdom, Uruguay.

Other: 5. Argentina, Canada, Honduras, Sweden, Switzerland.

Paragraph 2

Total number of replies: 48.

Affirmative: 28. Bahamas, Bangladesh, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Ecuador, El Salvador, Ghana, Guyana, Indonesia, Jordan, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Oman, Peru, Romania, Sierra Leone, Sri Lanka, Sudan, Turkey, Zimbabwe.

Negative: 13. Austria, Bulgaria, Cuba, Cyprus, Czech Republic, France, Germany, Hungary, Japan, Philippines, Poland, Qatar, United States.

Other: 7. Australia, Belgium, Canada, China, Honduras, Republic of Korea, Portugal.

Argentina. CGT: (1) The Recommendation could contain a series of guidelines enabling the national authorities to implement a policy for the organization of the labour market and the respective contributions of the public employment service and private employment agencies. (2) This could take the form of a council with the participation of representatives of the workers' and employers' organizations, providing a forum of analysis, consultation and debate on draft legislation and regulations on employment policy.

Australia. (1) Governments have responsibility for the implementation of their labour market policy and this may include such a national authority or advisory board. However, this may not be appropriate in all circumstances.

ACCI: (1) No, a Recommendation should not seek to entrust a national authority with the organization of the labour market to the extent that an authority would regulate the contributions of public and private providers. (2) Should such an authority be deemed necessary it should take the form outlined, although discretion should rest with national governments on consultation regarding labour market policies.

Austria. (2) No, there should be a centralised supervisory body, such as a ministry.

Bahamas. (1) Yes, e.g. the Labour Department. (2) This could comprise the three social partners.

Belgium. (1) Yes. In accordance with the distribution of authority in the member State. (2) No, but it might be useful for the national authority to be able to rely on an advisory council.

Wallon Region: (1) In Belgium, these areas are primarily — if not exclusively — a matter for the regional authorities. The question has scarcely any meaning unless the national authority mentioned is specified in another way. (2) From the standpoint of cooperation, it would be valid to entrust a "national authority" made up of a council "with the participation of representatives from the public employment service and from private employment agencies as well as from the most representative organizations for employers and workers" with the implementation of a national policy on organizing the labour market. This council would constitute a means of bringing about this cooperation.

Brazil. CNC: (1) No.

CNI and CNA: (1) (2) Yes.

Canada. Collaboration between PES and PREA should be encouraged when desirable. Public authorities cannot force or dictate the involvement of PEAs in a national policy, but could invite them to assist in its implementation. (2) Mechanisms for collaboration should be left for the appropriate participants in each jurisdiction to determine on a voluntary basis.

China. (2) Multilateral coordination agencies.

Cuba. (2) No. They should be adapted to the specific circumstances in each country.

Cyprus. (2) The national authority should be a Government agency under which a tripartite consultative body could operate in which PREA should participate. PEO: (2) Yes.

Czech Republic. (2) It is not necessary for the national body to take the form of a council.

KUK: (1) The distribution of public and private services should not be fixed directly "from the green table", as this will develop naturally and change over time.

Denmark. DA: (1) This would not appear to be a question which needs to be addressed in this Recommendation. Consultation should be encouraged, but its precise nature and composition should be left to national governments, employers' associations and other parties to define.

Germany. It is debatable whether the recommendation made in (1) is necessary. In no way should the instrument prescribe, as in (2), the structure of the national authorities.

DGB: (1) and (2) Yes. This should also be taken up in the Convention.

Honduras. (1) It is vital, by all means available, to establish an organized labour market in which all the actors strive to implement a national policy to ensure its efficacy and stability;

these actors might have equal or different duties and objectives but they must complement one another. (2) The Government does not feel that, at present or in the short term, this would be a wise measure. It might be appropriate in the medium or long term.

Ireland. (1) The formulation and implementation of national policy on the organization of the labour market is a matter for the national Governments — and not a matter which should be addressed in a Recommendation on employment agencies.

Japan. (2) The national authority should take the form which complies with the actual situation of each Member and it is not appropriate to provide such a specific form as stated in the questionnaire.

ZENROREN: (1) No.

Republic of Korea. (2) Since circumstances may differ in each nation, it should be up to the national authority to have the responsibility for implementing a national policy — including a policy on organizing the labour market.

Mexico. (1) The Government considers that this does not fall within the scope of this instrument.

Norway. LO: (1) Yes, as a tripartite body.

Peru. (2) Joint policy decisions would improve the functioning of labour markets compared to decision-making solely by the national authorities. However, certain exceptions could be made for cases in which the social partners do not wish to set up such a council.

Philippines. (2) No, purely government initiative.

Poland. OPZZ and Solidarnosc: (1) Yes. *OPZZ:* (2) Yes.

Solidarnosc: (2) Yes, or any other form or tripartite body should be established where the social partners would have a right of active participation including voting.

Portugal. (1) Such a national policy on organizing the labour market should be adapted to the market economy, free economic initiative and the private nature of employment agencies. (2) The national authority in question would depend on national practice. The participation of the social partners would be very desirable.

CAP: (1) Private placement agencies are sources for the creation of job opportunities which should be used and recognized in the labour markets they serve; workers using private placement agencies should be granted sufficient protection. (2) ILO member States should establish a dialogue with temporary employment agencies with a view to determining the policies which best suit all the parties.

Qatar. (2) No, because the national authority is a public body. An organization such as that mentioned in the questionnaire could play a role in formulating and amending policies, i.e. it might help the national authority to implement national policy concerning the labour market and to specify the role of the contributions of private and state employment agencies in this area.

Slovakia. (1) It should be pointed out that the respective national authority should be responsible for the implementation of the labour market policy involving both the public services of employment and the private employment agencies.

South Africa. BSA: No.

Spain. CEOE: (1) and (2) Yes.

Sweden. (1) Provisions contained in the Employment Service Convention, 1948 (No. 88), to which reference is made in the preamble of the Convention, should be sufficient

Switzerland. (1) In the Government's opinion, the national authority assumes, by its very nature, the responsibility of the implementation of a national policy on organizing the labour market; it should establish the role of the public service and acknowledge the active participation that the private agencies might have in this implementation.

CSC/CNG: (1) (2) Yes.

Turkey. (1) Yes, in conjunction with private agencies.

TISK: (2) It is considered that such a council would facilitate reaching a consensus among the parties.

United States. (1) This would be consistent with the view of the nature of public responsibility. (2) The form that the national authority takes is the purview of Members and other nations.

USCIB: (1) No. This is a form of "dirigisme" that is incompatible with the basic economic policy orientation of many Member countries. The market, as measured by success in filling job vacancies and putting people to work, should determine the respective contributions of the public employment service and PREA.

AFL-CIO-CLC: (1) Yes. A national authority other than the public employment service should be established to settle questions and establish policy relating to the different roles of the public employment service and private agencies. (2) Yes.

Uruguay. Workers' sector: (1) Yes. This should be incorporated in the Convention.

Zimbabwe. (1) There is need for consultation between employers' and workers' organizations and the competent authority. (2) The national authority should take the form of a council.

See the comments of the Office under question 27.

- Qu. 29** (1) *Should the Recommendation provide measures for enhancing the contributions of private employment agencies to the adequate functioning of the labour market, in respect of:*
- (a) *the protection of workers?*
 - (b) *the protection against long-term fragmentation of the labour market?*
 - (c) *the promotion of employment?*
 - (d) *other objectives? (Please specify.)*
- (2) *If so, which measures?*

Paragraph 1, subparagraph (a)

Total number of replies: 57.

Affirmative: 42. Argentina, Austria, Bahamas, Bangladesh, Belgium, Canada, Chad, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Ethiopia, Ghana, Guyana, Honduras, Indonesia, Jordan, Republic of Korea, Kuwait, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Philippines, Portugal, Romania, Saudi Arabia, Sierra Leone, Sri Lanka, Switzerland, Thailand, Turkey, Zimbabwe.

Negative: 14. Australia, Denmark, Finland, France, Hungary, Ireland, Japan, Lithuania, New Zealand, Poland, Sudan, Sweden, United Kingdom, United States.

Other: 1. Lebanon.

Paragraph 1, subparagraph (b)

Total number of replies: 50.

Affirmative: 34. Bahamas, Bangladesh, Belgium, Canada, Chad, Chile, China, Colombia, Congo, Cuba, Cyprus, Czech Republic, Ecuador, Estonia, Ethiopia, Ghana, Guyana, Honduras, Jordan, Republic of Korea, Kuwait, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Philippines, Portugal, Qatar, Romania, Sierra Leone, Thailand, Turkey.

Negative: 15. Australia, Austria, Denmark, Finland, France, Hungary, Ireland, Japan, Lithuania, New Zealand, Norway, Poland, Sweden, United Kingdom, United States.

Other: 1. Argentina.

Paragraph 1, subparagraph (c)

Total number of replies: 52.

Affirmative: 36. Bangladesh, Belgium, Bulgaria, Canada, Chad, Chile, China, Colombia, Congo, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Ethiopia, Ghana, Guyana, Honduras, Indonesia, Jordan, Republic of Korea, Kuwait, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Philippines, Portugal, Romania, Sierra Leone, Sri Lanka, Thailand, Turkey.

Negative: 15. Australia, Austria, Denmark, Finland, France, Hungary, Ireland, Japan, Lithuania, Norway, New Zealand, Poland, Sweden, United Kingdom, United States.

Other: 1. Argentina.

Paragraph 1, subparagraph (d)

Total number of replies: 20.

Affirmative: 14. Bahamas, Canada, Chile, Colombia, Costa Rica, Cuba, Cyprus, Ethiopia, Indonesia, Romania, Sierra Leone, Sri Lanka, Turkey, United Kingdom.

Negative: 6. Austria, Belgium, Finland, France, Poland, United States.

Other: 0.

Argentina. CGT: (a)-(c) Yes. (d) The recruitment of workers by the employing enterprise. These measures should be applied through regulations established by the competent authority and in particular as regards compliance with the standards specifically established for regulating the activity of private agencies.

Australia. Such measures need to be developed in the context of the particular labour market and the resources which may be available to enforce such roles, if appropriate. The presence of private employment agencies is likely to contribute to all of these objectives in the longer term.

ACCI: (a) No, no more than provided for other employers. (c) Yes, but only to the extent that agencies could be positively encouraged/funded to provide employment opportunities and work readiness through short-term engagement. This should, however, not act in any way to

restrict the operation of agencies. (2) The Recommendation should encourage Governments to recognize the potential role of private employment agencies in redressing long-term unemployment, and should encourage the development of joint programme delivery and job readiness schemes.

Austria. (b) No, because the labour market is so varied that, even if placement is only made by the public employment services, it is not possible to avoid a fragmentation of this market. (c) The promotion of employment should be reserved for the public employment services.

Belgium. (b) Yes. Neither the employers nor the workers have any interest in a fragmentation of the market; transparency should be the order of the day.

Canada. The Recommendation should refer to these matters in a general way without specifying particular measures.

Chile. Yes, it may be advisable in the situations addressed in (a)-(d): supply of information of use for education and/or vocational training programmes.

China. In view of the variety of national conditions, there is no need to specify concrete measures.

Costa Rica. (d) The Recommendation should contain an explicit list of the various Conventions which establish regulations and contain bans in this respect so as to avoid contradictions and overlapping between the new Convention and existing ones.

Côte d'Ivoire. (2) On this point, private employment agencies should not be authorized to conclude a labour contract for and on behalf of the employer and the worker; furthermore remuneration of the agency in question for its services should be the responsibility of the employer.

UGTCI: (b) The fragmentation of the labour market, as indeed the repercussions on relations established by means of collective agreement, are concerns which require considerable attention on the part of trade unions.

Cuba. (d) Yes, in whatever respect the specific country considers it necessary. (2) To fulfil the national standards in this respect.

Cyprus. (2) Incentives, not excluding financial ones. Also technological and other support.

Czech Republic. KUK: (2) A fundamental measure would be to establish clear legal rules pertaining to private employment agencies which, while maintaining a reasonable level of worker protection, would restrict their activities as little as possible.

Denmark. (a) No. The same rules apply as to other enterprises.

DA: (b) Yes. (c) The strong development of TWAs over the years is a direct result of their role in promoting employment.

Ecuador. (2) Legislation and establishing levels of coordination.

Estonia. (b) The workers consider that the protection against long-term fragmentation of the labour market is important.

Ethiopia. (d) Promotion of training.

Finland. SAK, STTK and AKAVA: (a) Yes.

Germany. DGB: (2) The increase in precarious employment relationships, not least because of private employment agencies, makes an increase in the contributions of private employment agencies somewhat irrelevant.

Honduras. (2) A more active participation of employment agencies in measures to combat unemployment and exclusion on grounds of discrimination; a better matching of the activities with demands of the labour market.

Indonesia. (2) Measures could contribute to the safety and welfare of workers — including during strikes.

Ireland. (a) Any contributions from private employment agencies in this area should be channelled either through a cooperation mechanism set up with the public employment service or through submissions to the relevant government department responsible for the labour market.

Japan. The meaning of this question is not clear. There are many duplications with other provisions and conditions differ in each nation.

Jordan. Federation of Chambers of Commerce and Industry: (a)-(c) No.

Amman Chamber of Industry (a), (c) Yes.

Lebanon. This should take place under the supervision of the administration.

Mali. (2) These measures might include: the distribution of information on the labour market as a whole; cooperation between private employment agencies by providing vital information on their activities to the competent authority.

New Zealand. New Zealand believes that these objectives are best addressed by the Government through its general policies.

Nicaragua. (2) An institutional framework should be set up to ensure that these services are subject to regulations; this framework, of a tripartite nature, might take the form of a national council which would be responsible for employment services and the implementation of the policy on organizing the labour market.

Peru. (2) A definition of the conditions under which all agencies should operate, adapted to national realities; adoption of measures for the most disadvantaged population groups; adoption of special measures to prevent agencies from contributing to the increasing precariousness of employment.

Poland. OPZZ and Solidarnosc: (a)-(d) Yes.

Solidarnosc: (2) Taxation policy; permission of private employment agencies to take an active part in formulating national policy on the labour market; subcontracting of part of the public employment agencies' tasks to private employment agencies.

Portugal. (a)-(d) Yes. The definition of these measures should be left to the national authority.

Qatar. (b) These agencies might also carry out surveys on the situation and needs of the labour market, propose solutions to the problems that arise and carry out any activities which might help the labour authority formulate adequate labour market policies.

Romania. (2) Institutional and legislative measures to extend the field of competence of private employment agencies; consultation of these agencies when taking decisions on the labour market; consolidation of cooperation with public employment services.

Sierra Leone. (d) The attainment of full employment and promotion of skills-oriented self-employment. (2) The measures could include regulatory and where possible judicial proceedings for the breach of (a) and (b).

South Africa. BSA: No, PREAs should be subject to the same measures for enhancing the adequate functioning of the labour market as any other employer.

Spain. CEOE: (2) The measures could be as follows: permanent cooperation between the public employment service and private employment agencies; greater self-regulation; the exchange of data and information and the action of the participatory council.

Sri Lanka. (2) Certification of contracts at country of employment.

Switzerland. (a) From the same standpoint of complementarity, the Government feels that the Recommendation could provide for specific measures to improve synergy between the public and private employment services; however, over-interference from the authority should be avoided, as private agencies, by their very nature, adjust their activities to the rules of the market economy.

CSC/CNG: (a)-(c) Yes.

SVUTA-FSETT: (1) Yes.

United Kingdom. The provision of services free to jobseekers.

CBI: (a)-(c) Yes.

BIU: (a)-(c) No. Unions are the protectors of workers, not private employment agencies whose objectives are simply to make profits.

United States. (a)-(d) It would be preferable to allow market forces and the body of experience to suggest what might be helpful in this regard.

USCIB: (b) There are conflicting data concerning whether or not there is a danger of long-term fragmentation of the labour market. Any measure attempting to address the issue would be premature. (c) Yes, provided that the measure recognizes that, subject to protection against abuses, the most effective way to enhance promotion of employment by PREA is to maximize their ability to act freely in the labour market.

AFL-CIO-CLC: (a) Yes, in the United States there has been a fragmentation of the labour market and an increase in precarious employment, as well as negative effects on relationships established by means of collective bargaining, since the growing use of private employment agencies.

Uruguay. Workers' sector: (a)-(c) Yes.

See the comments of the Office under question 27.

Qu. 30 *In order to improve the functioning of the labour market, should the Recommendation provide that the competent authority should, taking into account national conditions, promote a policy of self-regulation by private employment agencies?*

Total number of replies: 56.

Affirmative: 35. Australia, Austria, Bahamas, Belgium, Canada, Chad, Congo, Côte d'Ivoire, Cyprus, Denmark, Ecuador, El Salvador, Ethiopia, Finland, France, Guyana, Honduras, Ireland, Japan, Jordan, Republic of Korea, Kuwait, Lithuania, Malaysia, Mali, Mexico, Nicaragua, Portugal, Romania, Sierra Leone, Sri Lanka, Sudan, Turkey, United States, Zimbabwe.

Negative: 19. Bangladesh, Bulgaria, Chile, Colombia, Cuba, Czech Republic, Ghana, Hungary, Indonesia, Mauritius, Norway, New Zealand, Oman, Peru, Poland, Qatar, Sweden, United Kingdom, Uruguay.

Other: 2. Argentina, China.

Argentina. CGT: No.

Australia. The development of self-regulation frameworks encourages the development of an ethical operational base. The self-regulation approach is more appropriate for more developed labour markets where inefficient practices are inhibited by existing market forces and the high level of information available to all participants in the labour market. In less developed labour markets the development of real competition and improving access to information through the development of efficient and effective public employment services may be a more effective approach.

Brazil. CNC: No.

CNI: Private employment agencies should function within a clear and objective regulatory framework.

CNA: Yes.

China. This system is not available at present in China.

Czech Republic. KUK: This would be very extreme in such a delicate area as the labour market, where a number of services must be guaranteed by the State.

CMK OS: No. Responsibility for employment policy is borne by the State, so it cannot be allowed to leave the matching of supply and demand only to market mechanisms.

Denmark. Yes. The competent authority could for example encourage private employment agencies to set up codes of ethics for their activities.

Finland. TT and LTK: No.

Germany. DGB: Given that the placement of workers is a particularly sensitive and important sector of activity, there should on no account be provisions to promote self-regulation by private employment agencies.

Honduras. Only on condition that this self-regulation should be approved by the Ministry of Labour and that it should be overhauled and its application monitored by the General Employment Board and the General Labour Inspectorate, respectively.

Ireland. The industry should be strongly encouraged to regulate its activities, adopt codes of practice and establish its own complaints mechanisms.

Japan. ZENROREN: No, public employment services are the main services; the role of private employment agencies should be considered exceptional.

Jordan. Private employment agencies should be regulated and measures should be taken if they infringe these regulations.

Republic of Korea. Due to lack of personnel and budget restraints, the competent authority might face constraints in regulating and supervising the illegal conduct of private employment agencies. Promoting a policy of self-regulation by the private employment agencies would ease this burden.

Malaysia. The Recommendation should include a code of conduct for PREA, to ensure a more professional service.

Mexico. Formulating a policy to encourage "self-regulation" by private agencies in the form of a "code of ethics" adopted by the agencies themselves would depend on each country's development level.

New Zealand. It is not necessary to promote a policy of self-regulation, given that the general legislation applies.

Peru. Self-regulation is not appropriate; such agencies should comply with the general guidelines laid down by the proposed Convention.

Poland. OPZZ and Solidarnosc: Yes.

Portugal. Yes, although the promotion of a policy of self-regulation by private employment agencies could be carried out only in the medium-term.

South Africa. BSA: Yes, strong support for self-regulation and flexibility.

Spain. CEOE: Yes, in line with the previous question.

Sri Lanka. Yes, through an association of agencies.

Switzerland. CSC/CNG: Yes.

SVUTA-FSETT: Self-regulation is one of many possible ways of regulating TWAs, together with collective agreements and appropriate legislation.

Turkey. TISK: Private employment agencies should be enabled to organize and establish parent organizations among themselves.

TÜRK-İS: No.

United Kingdom. CBI: The possibility should be included.

United States. An expectation of self-regulation by private employment agencies, coupled with public recourse to sanctions and penalties in the event of legal infringements and complaints, could raise the standards of practice and qualifications among private employment agencies.

USCIB: In those member States where there are the fewest government restrictions and the most job creation by PREA, PREA have developed codes of conduct and self-policing mechanisms.

AFL-CIO-CLC: The Federation seriously questions the wisdom of relying on systems of self-regulation because in all too many cases self-preservation and greed get a higher priority.

Uruguay. No. The regulation should be carried out by the competent authority.

Zimbabwe. Self-regulation by private employment agencies should be encouraged. The private employment agencies should come up with a code of ethics on their operations. The code of ethics should be registered with the competent authority.

See the comments of the Office under question 27.

Qu. 31 *Should the Recommendation provide measures concerning the required qualifications and training for the management and staff of private employment agencies?*

Total number of replies: 60.

Affirmative: 39. Austria, Bahamas, Belgium, Bulgaria, Chad, Chile, China, Congo, Côte d'Ivoire, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Ethiopia, France, Guyana, Honduras, Hungary, Indonesia, Japan, Jordan, Republic of Korea, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Peru, Philippines, Portugal, Romania, Sierra Leone, Switzerland, Thailand, Turkey, Uruguay, Zimbabwe.

Negative: 20. Australia, Bangladesh, Canada, Colombia, Cuba, Denmark, Finland, Ghana, Ireland, Kuwait, Lebanon, New Zealand, Norway, Oman, Poland, Qatar, Sudan, Sweden, United Kingdom, United States.

Other: 1. Argentina.

Argentina. CGT: Yes, since they are necessary for the prevention of fraudulent conduct by users. Qualifications should be subject to the control of the State body.

Australia. In more developed labour markets, particularly those operating a self-regulatory framework, competitive forces will tend to select for better qualifications and training. However, it should be noted that qualifications and training do not guarantee the most efficient and effective service level and other operators should not be prohibited by unnecessary credentialism.

ACCI: No. This interference is not made in most sectors of industry and should not be forced upon private employment agencies.

Austria. Yes, because this is in the interest of the workers who are being placed; it is also vital to prevent mistakes in placement.

Brazil. CNC, CNI and CNA: No.

Congo. Yes, this would provide better guarantees for the credibility of these agencies and the quality of their services.

Côte d'Ivoire. UGTCl: Without the reply being considered as support for a Recommendation, the trade unions should commit themselves to skills and training systems liable to discourage abuse.

Czech Republic. These qualifications should be in direct relation to the specific activities and services offered by the agencies.

KUK: No. These measures are not indispensable and would cause unnecessary interference of the State in this area.

Denmark. It is important that the staff of private employment agencies should be as competent as possible. But with the existing competition conditions in the placement sector, there is already a staff policy which ensures that the employees have the necessary qualifications. It therefore seems necessary to incorporate specific methods in the Recommendation.

Finland. Every effort should be made to ensure that the staff of private employment agencies are as competent as possible. No specific measures to this effect need be incorporated in the Recommendation.

Germany. DGB: The granting of a permit should depend upon appropriate qualifications.

Honduras. Yes. It is obvious that to enable the Government to improve the functioning of the labour market, the skills of staff in the agencies in the labour market should be upgraded.

Hungary. The prescription of suitable qualifications seems to be necessary by all means with respect to the managers and employees of the agencies.

Indonesia. The minimum skills required for staff in private employment agencies should be those of high-school level.

Ireland. No, but the competent authority could recognize or encourage certain qualifications.

Japan. The actual content of the measures should be left to each Member.

Republic of Korea. Workers are liable to become victims of abuse by the private employment agencies. The competent authority should strictly set the required qualifications and training for the management and staff of the private employment agencies.

Kuwait. No, this should be determined by the national law and practice in each country.

Lebanon. The Government feels that the determination of the skills required should be left up to each country.

Malaysia. The Recommendation should provide for measures concerning the required minimum qualifications and training for the management and staff of PREA.

Mexico. It would be a good idea to have a general outline of the technical profile of the staff responsible for interviewing and short-listing job applicants, but these should not be actual guidelines.

New Zealand. New Zealand does not believe such regulation is necessary.

Peru. Yes, especially if one takes account of the fact that other countries have legislation which makes qualifications of staff a requirement for the operation of such agencies.

Poland. Solidarnosc: Yes.

Spain. CEOE: Yes, as regards a minimum structure and in line with the provisions of the Employment Service Convention, 1948 (No. 88), and its accompanying Recommendation.

Switzerland. The Government believes that the Recommendation should include provisions concerning the minimum skills requirements for the management of private agencies, in order to avoid practices which might be to the detriment of workers and employers.

Turkey. Yes, definitely and if possible this should be included in the Convention.

United Kingdom. BIU: Yes, to be included in the Convention.

United States. Market forces and the disclosure of qualifications of persons affiliated with private employment agencies, coupled with recourse to sanctions and penalties in the event of legal infringements or complaints, should be sufficient.

USCIB: Public criteria for qualifications and training of management and staff could not keep pace with the rapidly evolving methods of training, testing and electronic data systems that are used by PREA.

AFL-CIO-CLC: The Federation supports strong systems of qualifications and training as a means to decrease abuse; however, this should in no way be taken to be interpreted as support for recognition.

Zimbabwe. It is imperative that the management and staff of private employment agencies should have acceptable qualifications in order to uphold good standards within the profession.

See the comments of the Office under question 27.

- Qu. 32** (1) *Should the Recommendation include measures for promoting the exchange of information and experience among Members on contributions from private employment agencies to the functioning of the labour market? If so, please specify these measures.*
- (2) *Do you consider that the International Labour Office should provide assistance in the exchange of information and in the sharing of experience? If so, please specify.*

Paragraph 1

Total number of replies: 60.

Affirmative: 50. Australia, Austria, Bahamas, Belgium, Bulgaria, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Ethiopia, Finland, Guyana, Honduras, Hungary, Indonesia, Japan, Jordan, Republic of Korea, Kuwait, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Oman, Peru, Philippines, Portugal, Qatar, Romania, Sierra Leone, Singapore, Sri Lanka, Sudan, Sweden, Turkey, United States, Uruguay, Zimbabwe.

Negative: 8. Bangladesh, France, Ghana, Ireland, Norway, New Zealand, Poland, United Kingdom.

Other: 2. Argentina, Switzerland.

Paragraph 2

Total number of replies: 53.

Affirmative: 45. Australia, Austria, Belgium, Bulgaria, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Finland, Ghana, Guyana, Honduras, Hungary (measures not specified), Indonesia, Japan, Jordan, Kuwait, Lebanon, Lithuania, Malaysia, Mauritius, Nicaragua, Norway, Oman, Peru, Philippines, Poland, Portugal, Qatar, Romania, Sierra Leone, Singapore, Sudan, Sweden, Turkey, United States, Uruguay, Zimbabwe.

Negative: 6. Bangladesh, Estonia, France, Ireland, New Zealand, United Kingdom.

Other: 2. Argentina, Bahamas.

Argentina. CGT: (1) Yes. An important measure which could be recommended is the establishment of an international database which would be accessible to any country adhering to the proposed Convention. (2) The ILO could be the body in which the above-mentioned database was established.

Australia. (2) The ILO could assist in the process of information sharing by undertaking comparative analyses of member States' labour markets with different regulatory frameworks, fostering study tours and facilitating the exchange of officials to assist Members understand better the options available to them. It could also request information from member States and disseminate it via the Internet.

Austria. (1) Yes, especially with respect to the exchange of studies on the role of private employment agencies in the functioning of the labour market. (2) The exchange of information could at first take place on a bilateral basis. If need be, the way in which the ILO might provide assistance should be defined more precisely.

Belgium. Wallon Region: A number of measures might be pertinent: the issue of a regular review containing contributions from member States; the organization of seminars and symposia; the preparation of studies and joint schemes (lists, professional practices, methods etc.); an exchange of officials from various member States; reciprocal training programmes for officials; evaluation missions, advisory missions, etc.

Brazil. CNC and CNA: (1) and (2) No.
CNI: (2) Yes.

Canada. (2) The ILO should also exchange expertise and data on these issues with other international organizations, e.g. the OECD.

Chile. (2) By means of regularly drafted reports. The Office should analyse these reports and disseminate its findings and conclusions.

China. (1) Through publications and regular reports for an exchange of experience.

Congo. The ILO could include this aspect on the agenda of regular meetings held under its auspices at regional or subregional level. Similarly, the competent department of the ILO could have a data bank on the various national experiences at disposal at headquarters for the member States.

Côte d'Ivoire. (1) An exchange of experience should be provided for in the following areas: discrimination in employment and occupation; freedom of association, worker's claims in the event of their employer's insolvency; dishonest advertising, etc. (2) The ILO should provide assistance in organizing and distributing this information.

Cuba. (1) Yes. By means of reports and possibly by organizing events on employment services.

Cyprus. PEO: (1) and (2) Yes. The competent authorities of the Members should jointly organize specialized training programmes or seminars for both the staff of PES and PREAs.

Czech Republic. (1) In the form of joint discussions, studies, etc. (2) In the form of information bulletins, tripartite consultations and seminars (perhaps even through E mail, Internet).

KUK: In the form of an ILO yearbook in which contributors would be individual States; this could contain a summary of the activities of private agencies.

Denmark. It could be useful to know the experience of the other countries in this field. DA: (2) The ILO seeks to promote the exchange of information in all areas of labour market policy. The contribution of private employment agencies should be no exception.

Ecuador. (1) Yes, by sending statistics. (2) Yes, in the form of courses, seminars and training.

El Salvador. (2) Yes. The ILO's assistance should be technical and concern the administration of these agencies and the direction they should take.

Ethiopia. The measures could include: forums to exchange labour market information within a country and at regional and international level; the promotion of the exchange of labour market information; assistance in the application of Conventions.

Finland. (1) It would be judicious to promote the exchange of information and experience. Instead of imposing an obligation to supply information at regular intervals, however, comprehensive national reports on private employment agencies and their operations could be compiled from time to time. (2) The ILO could collect information on the recruitment of migrant labour.

TT and LTK: (1) and (2) Non.

France. CFTD: An affirmative reply to both questions.

Germany. DGB: (2) In view of the vast number of urgent problems, it is doubtful whether the ILO should at present pay specific attention to the exchange of information and sharing of experience with regard to private employment agencies.

Ghana. (2) Through workshops/seminars.

Honduras. (1) There should be an exchange of information on the various contributions of private employment agencies to the functioning of the labour market at world level. (2) The ILO's technical assistance is vital not only to organize this exchange and disseminate the findings but also to improve the functioning of the private employment agencies, public employment services and the labour market in general.

Indonesia. (2) The ILO should assist in the exchange of information and in the sharing of experiences with a view to improving the functioning of the labour market, working conditions, occupational safety and health, wages and special problems.

Japan. (1) Only general and flexible provisions.

ZENROREN: (1) No.

Jordan. (1) By an exchange of visits, bilateral agreements and an exchange of information.

Kuwait. (1) By bilateral agreements and under the supervision of the competent authorities concerned. (2) By organizing symposia and publishing regular bulletins.

Lebanon. (1) The exchange of information on this matter is useful. It might, however, take place by means of bilateral contacts between parties who agree on this. (2) The ILO has a role to play in helping compile information from the various countries.

Malaysia. (1) The Recommendation should include measures for promoting the exchange of information and experience among members through seminars, joint discussions and the Internet. (2) The ILO should provide assistance in the exchange of information and in the sharing of experience through teleconferences, Internet, training, seminars, newsletters and periodicals to Members.

Mali. (1) A revised standard should encourage complementarity and cooperation between members.

Mexico. (1) The Recommendation could put forward the advantages of an international exchange of information and experience among private agents; the way in which this would be carried out would depend on each country's particular interest.

New Zealand. (1) New Zealand does not support the introduction of this Convention and Recommendation, and therefore does not see any need for measures promoting exchanges of information and experience. (2) Given the many demands placed on the ILO, New Zealand does not believe that this is a priority area.

Nicaragua. (1) These measures could take the form of seminars and specialized training courses organized by members of these agencies. (2) By means of courses, seminars and internships.

Oman. (2) Yes, it should provide assistance in the publication of information bulletins, exchanges of experiences and information.

Peru. (2) Advisory services to improve placement systems; dissemination of other countries' experience with respect to placement systems.

Poland. Solidarnosc: (2) Collecting data on the issue concerned; publishing researches on the subject; assistance in organizing regular meetings.

Qatar. (1) Yes, information could be exchanged by means of correspondence or at bilateral or regional meetings. (2) An ILO service which would be entrusted with compiling and disseminating information on private employment agencies amongst the member States, as well as with carrying out studies and specific surveys; it would communicate its findings to the member States.

Romania. (1) Bilateral and multilateral programmes on the development of private employment agencies; the publishing of reports. (2) It could organize international meetings, develop regional programmes and publish periodical reports.

Sierra Leone. (2) The assistance should take the form of ILO technical assistance to strengthen tripartism; and advisory services and training activities on issues such as collective bargaining, minimum wage determination and conciliation and arbitration. Emphasis should be placed on promoting awareness of the relevant ILO Conventions.

Spain. CEOE: (1) Yes, and the measures should be in line with those of the Employment Service Convention, 1948 (No. 88), and its accompanying Recommendation (No. 83).

Sri Lanka. (1) Yes, regular meetings.

Sudan. (1) The ILO, through its competent bodies, should organize regional seminars for member States sharing similar conditions in order to attain this aim; it should also issue publications including information on agencies, the labour market and available experiences.

Sweden. (1) Yes, this is particularly important where rental firms are concerned. If anything, however, an injunction of this kind should be included in a resolution.

Switzerland. In so far as members are obliged to submit reports on the Conventions they have ratified or not, the Government feels that the exchange of information and sharing of information gathered is a matter for the ILO.

Turkey. TISK: (2) Yes. In this respect, individual projects could be undertaken and regional research and evaluations carried out. In addition, the ILO should hold seminars or initiate short-term training programmes on this issue.

United Kingdom. CBI: (1) (2) Yes.
BIU: (1) Yes.

United States. (1) The exchange of information and experience among Members would be a most appropriate and helpful recommendation. (2) If the International Labour Office is promoting a Convention that treats this subject, it should also accept a role in providing assistance in the exchange of information and in the sharing of experience.

USCIB: Member countries could periodically prepare reports based on official data where regulations require reporting of data by agencies, and on data from private sources, where reporting is not required. (2) The ILO could serve as the coordinator of the exchange of information and the forum for discussion of reports.

Uruguay. Workers' sector: (1) The ILO should call upon governments on a regular basis and update the information and experiences it gathers.

Zimbabwe. (1) The measures should include the holding of inter-member State conferences and the payment of subscriptions by Members. (2) The ILO should assist in the organization of international and regional workshops on the role of private employment agencies.

The vast majority of replies were in favour of an international exchange of information on private employment agencies. The Office changed the provisions envisaged in the light of a number of comments and suggestions contained in the replies. The new wording is contained in Paragraph 13 of the proposed text for the Recommendation.

VI. Special problems

Qu. 33 *Taking into account the existence of the Migration for Employment Convention (Revised), 1949 (No. 97); and of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), should the new instrument(s) provide that a Member should take specific measures for protecting migrant workers recruited by private employment agencies?*

Total number of replies: 60.

Affirmative: 38. Belgium, Bulgaria, Canada, Chad, Chile, Colombia, Congo, Cuba, Cyprus, Czech Republic, Ecuador, El Salvador, Ethiopia, Ghana, Indonesia, Jordan, Lithuania, Malaysia, Mali, Mauritius, Nicaragua, Norway, Oman, Panama, Philippines, Poland, Portugal, Romania, Saudi Arabia, Sierra Leone, Sri Lanka, Sudan, Sweden, Switzerland, Turkey, United States, Uruguay, Zimbabwe.

Negative: 18. Australia, Austria, Costa Rica, Côte d'Ivoire, Denmark, Estonia, Finland, France, Germany, Guyana, Honduras, Japan, Kuwait, Lebanon, Mexico, New Zealand, Qatar, United Kingdom.

Other: 4. Bahamas, Hungary, Ireland, Peru.

Argentina. UIA: The UIA believes it would be inappropriate to include such specific subjects as that of migrant workers recruited by private employment agencies, since this would go against the universal nature of an international instrument.

CGT: Neither Convention No. 97 nor Convention No. 143 covers migrant workers recruited by private employment agencies. Furthermore, Article 11(2)(c) of Convention No. 143 excludes them from its scope. The CGT believes that an adequate employment policy for these workers should be established.

Australia. The regulatory framework applicable to migrant workers should be generalized and not restricted to workers recruited by private employment agencies.

Bahamas. Yes, if the migrant workers are not illegal in the country. Once recruited they should be afforded protection.

Brazil. CNC: No.

CNI and CNA: Yes.

Congo. Yes, because migrant workers are one of the most vulnerable social categories. Specific measures should be taken to protect them.

Costa Rica. This scope of activity should be restricted in the case of private employment agencies. The contrary would imply paving the way for speculation with this type of worker.

Côte d'Ivoire. The Government does not feel it necessary to stipulate in the new instruments that all Members should take specific measures to protect migrant workers recruited by private employment agencies because this has already been the subject of Conventions ratified by the member States.

UGTCL: The revision of Convention No. 96 must take account of the specific measures taken to guarantee the protection of migrant workers recruited by private employment agencies. In the case of fraud, penalties should be imposed.

Cyprus. PEO: Yes. Provided the recruitment, introduction and placing of migrant workers by the PREA is conducted in accordance with the provisions of the national legislation by which these Conventions have been implemented.

Czech Republic. CMK OS: Especially with the aim to prevent dumping wages.

Denmark. It is important that the member States should be concerned about the protection of migrant workers. However, there does not seem to be a need for introducing rules on the special protection of this group of jobseekers in relation to private employment agencies.

Estonia. The workers' representatives consider that all general principles to protect migrant workers should be provided.

Finland. SAK, STTK and AKAVA: Yes.

France. CFDT: Yes, governments should take specific measures to protect migrant workers. These could include: the issuing of a special permit for the agencies, inspection and penalties against abuse such as fraud.

Germany. DGB: As there is a danger that a considerable number of migrant workers might find themselves in precarious employment relationships and given that they are frequently inadequately informed about national social and working conditions, it would be a good idea to introduce special measures to protect migrant workers recruited by private employment agencies.

Indonesia. The Department of Manpower should have legal powers for protecting migrant labour.

Japan. Measures for the protection of migrant workers should be discussed in the context of Conventions Nos. 97 and 143.

ZENROREN: Yes.

Malaysia. Every foreign worker should be treated as an equal to a local worker.

Mexico. The Government considers that in principle private employment agencies should not be involved in the contracting of foreign workers wishing to work in Mexico or of Mexicans wishing to work abroad.

New Zealand. New Zealand believes that migrant workers should receive protection in accordance with national practice, whether recruited by private employment agencies or not.

Norway. LO: Measures could include licensing, inspection and penalties for abuses such as fraud. The revision should also establish general principles and provide guidance to protect workers in one country for work in another.

Peru. CTD: Persons working abroad should enjoy the same protection as that laid down in provisions covering the workers of the host country; where these are less favourable than those of the country of origin, the standards of the country of origin should apply.

Portugal. CCP: There is no reason to make a difference.

South Africa. BSA: No, there is no reason to differentiate between migrant workers and other employees.

Sweden. It seems clear that migrant jobseekers and workers have special problems and must be given special protection.

Switzerland. The Government feels that irrespective of the existence of Conventions Nos. 97 and 143, and of their ratification, the Convention and Recommendation should provide for specific measures to protect workers in the case of cross-border placement.

SVUTA-FSETT: The Federation sees no reason to make any distinction between migrant temporary workers and other temporary workers or auxiliary staff.

VSA: The entire complex of problems regarding migrant workers must be taken into account in Convention No. 96 because they are also sometimes placed abroad by private employment agencies and have a particular need for worker protection.

Turkey. Yes, taking into account that these Conventions have not so far received a high level of ratification.

TISK: No.

United States. Migrant workers often cross national borders. While it is presumed that national laws direct attention to the status of migrant workers, it would be appropriate to include language in this new instrument relating to the protection of migrant workers recruited by private agencies.

USCIB: No.

AFL-CIO-CLC: Yes. The revision of Convention No. 96 should include specific measures taken by the Conventions to protect migrant workers recruited by private agencies. Such measures could include licensing, inspections and penalties for abuses such as fraud.

The majority of replies from the governments were in favour of a specific provision concerning migrant workers recruited by private employment agencies. The workers' organizations also supported this. A number of replies referred to the situation of these workers under other questions. Others pointed out that this subject had been a topic of discussion at the 81st Session (1994) of the Conference.

A significant minority of governments stated that they could not support a specific provision concerning migrant workers recruited by private employment agencies.

In view of these observations and reservations, the Office has redrafted the text. This provision has been included as Article 7 of the proposed Convention.

It should be noted that a Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration will be held in Geneva from 21-25 April 1997. The Conference may wish to take into account the results of this meeting.

(1) *Are there any particularities of national law or practice which, in your view, are liable to create difficulties in the practical application of an international instrument or instruments as conceived in this questionnaire?*

Qu. 34

(2) *If so, how would you suggest that these difficulties be met?*

Paragraph 1

Total number of replies: 59.

Affirmative: 15. Austria, Chile, China, Costa Rica, Czech Republic, Denmark, France, Mauritius, Mexico, Norway, New Zealand, Sweden, Turkey, United States, Zimbabwe.

Negative: 40. Australia, Bahamas, Belgium, Bulgaria, Canada, Chad, Colombia, Côte d'Ivoire, Cuba, Cyprus, Ecuador, El Salvador, Estonia, Ethiopia, Finland, Ghana, Guyana, Honduras, Hungary, Indonesia, Ireland, Japan, Jordan, Kuwait, Lithuania, Malaysia, Mali, Nicaragua, Oman, Panama, Peru, Poland, Portugal, Qatar, Romania, Sierra Leone, Spain, Sri Lanka, Sudan, Uruguay.

Other: 4. Congo, Germany, Lebanon, United Kingdom.

Argentina. UIA: The difficulties basically concern the establishment of provisions which are too specific and detailed and which leave little leeway for each Member to establish freely the applicable scheme.

Australia. ACCI: Should a Convention be adopted reflecting many of the questions in this survey, the market-clearing potential of private employment agencies would be significantly decreased in member States which gave effect to such an instrument in their national laws.

Austria. (1) Yes, especially the ban on agencies to provide placement services alongside services hiring out workers.

Chile. Yes, on account of the fact that existing legislation only grants the status of private employment agency to those acting exclusively as labour market intermediaries.

China. (2) Since different countries have their own difficulties, the way to deal with such difficulties varies. The Convention should only mention some provisions of principle.

Congo. The Government states that its country has practically no experience in the area of private employment agencies.

Costa Rica. The ban on profit-making employment agencies would make it necessary to adapt the legislation.

Czech Republic. It would be necessary to adopt legislation enabling the development of fee-paying private employment agencies because up to now the Czech legislation has been in line with the already outdated Convention No. 34.

Ecuador. (1) Yes, with respect to private employment agencies which provide temporary services and hire workers directly. *(2)* Legislation on this subject should be adopted.

Ethiopia. There are some national labour laws which do not allow the establishment of PREAs.

France. (1) Yes, in so far as private placement is today, except in specific cases, illegal in France. *(2)* In the case of France, these difficulties would be met by overhauling the national legal provisions on placement.

Honduras. In the Government's opinion, there would be no difficulties.

Hungary. There are no obstacles to the ratification of the instrument.

Jordan. Federation of Chambers of Commerce and Industry: (1) No, with some exceptions.

Amman Chamber of Industry: (1) Yes. (2) Yes, the law should be amended to allow private employment agencies to practice.

Mauritius. (2) The Recruitment of Workers Act, which relates to recruitment made by private agencies, stipulates fees claimed by the agencies from a jobseeker. This would be reviewed along the lines of the proposed Convention.

Mexico. (2) The activities concerning the subcontracting of staff or the incorporation of workers into an enterprise in order to be hired out to another, should be subject to a special legal framework.

New Zealand. New Zealand does not support the application of special conditions to one sector of the labour market. The industrial relations system and the legislation outlined in question 1 apply to all employees and employers. New Zealand would not be in a position to ratify the proposed Convention.

Norway. (2) Depending on the scope and totality of a revised Convention: see general observations, and the need to exclude temporary work agencies.

NHO: The Confederation believes that a revised Convention along the lines suggested by the Office, in which the principle of monopoly has no place, would probably not be ratified in Norway by the national authorities under present policies.

Panama. (1) No. The activity of private employment agencies in Panama is in its infancy.

Peru. (1) The main difficulty lies in the fact that private employment agencies are not regulated by Peruvian legislation. (2) In view of the above, and in accordance with the reply to question 20, the Government of Peru considers that such agencies should be regulated by specific provisions.

Portugal. (1) Portuguese legislation and practice are compatible with a Convention as set forth in this questionnaire. However, the employers' confederations (CPC and CIP) have different opinions on this matter.

Spain. CEOE: The ratification of a Convention as proposed by the preliminary report and reflected in the questionnaire would require new legislation.

Sweden. (2) In view of the Swedish situation which has very few rules about private employment agencies, and — as far as can be judged at present — a very limited need for interference in this market, it is important that new instruments should not contain detailed rules about methods for achieving the ends which the Convention is intended to serve; indeed, it should be left to national regulations to decide how these ends should be achieved.

LO and TCO: (2) The Confederations point out that one problem in Sweden is that in many cases, rental firms have built up their activities on the basis of unemployment insurance.

SEC: Rental firms do not base their activities on unemployment insurance. The rental firms have both full-time and part-time employees.

Turkey. (2) National legislation bans private employment agencies, with the exception of some workers in the agricultural sector; ratification would therefore require amendments to the legislation.

United Kingdom. (1) For the United Kingdom there would be a very special problem with any instrument which provided prescriptive rules, unnecessary burdens on business and intervention on how member States should behave towards private employment agencies. (2) These problems could be met by the development of an instrument to revise Convention No. 96 which follows closely the conclusions of the Committee on Private Employment Agencies at the 81st Session of the Conference.

United States. (2) Yes. Such difficulties of practical application of an international instrument as conceived in this questionnaire would be met best by taking into account

individual responses to the questionnaire, and by affording maximum Member discretion, especially on items where there is not a unanimity of response.

Zimbabwe. This would be difficult to implement in a Zimbabwean context. This relates specifically to the exchange of vacancies and sharing of offices.

The large majority of governments did not foresee any difficulties in the practical application of the proposed international instruments. However, a number of replies mentioned the difficulty of adjusting them to national legislation. Others feared that the provisions were too detailed and would prevent a rapid ratification of the revised Convention.

(Federal States only) Do you consider that, in the event of a Convention being adopted, the subject-matter would be appropriate for federal action or wholly or in part for action by the constituent units of the federation? **Qu. 35**

Total number of replies: 8.

Australia. The subject-matter would be appropriate for both federal and State/ Territory action.

Belgium. In Belgium, fee-paying employment agencies are partially a matter for federal action and partially a matter for the regions. Indeed, regulations on fee-paying employment agencies in the strict sense of the term are a matter for the regions; basic regulations on temporary work are a matter for the federal authorities, whilst the authorization granted to temporary work agencies is a matter for the regions. Finally, regulations on working conditions, protection of remuneration and occupation safety and health for all workers is a matter for federal action. Consequently, the subject-matter of the revised Convention would be totally or in part the responsibility of the regional authorities making up the Federation of the Kingdom of Belgium, in so far as their field of competence extends to matters relating to employment — in line with the final scope of the Convention and Recommendation.

Canada. The subject-matter would fall partly under federal and partly under provincial jurisdiction.

Germany. In Germany, labour placement is regulated uniformly through the Federal Republic. There is therefore no need for measures at the Land level.

Malaysia. It would be appropriate for the federal authorities as well as the State authorities to take action in stages depending on the concurrence of the Federal and State legislatures.

Mexico. The entities belonging to the Federal Pact enjoy a status of relative autonomy. This legal condition obliges the States of the Union to fulfil all provisions adopted by the Federation; these include all the legal standards to be applied nationally, and international Conventions and agreements.

Switzerland. If the Conference adopted a Convention, the issue would be a matter for the federal authorities.

United States. Because of the diversity of approaches among the states of the United States, greater rather than lesser flexibility and discretion is advised in the event of a Convention being adopted.

In the majority of cases, a Convention on private employment agencies would be a matter for both the federal authorities and the other authorities.

Qu. 36 *Are there, in your view, any other pertinent problems not covered by the present questionnaire which ought to be taken into consideration when the instrument or instruments are being drafted? If so, please specify.*

Total number of replies: 45.

Affirmative: 6. Australia, Belgium, Estonia, Mexico, Sri Lanka, Sudan.

Negative: 38. Austria, Bahamas, Bulgaria, Canada, Chad, Chile, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Denmark, El Salvador, Ethiopia, Finland, France, Germany, Honduras, Indonesia, Ireland, Japan, Kuwait, Lithuania, Malaysia, Nicaragua, Norway, Oman, Panama, Peru, Poland, Qatar, Romania, Sierra Leone, Spain, United Kingdom, United States, Uruguay, Zimbabwe.

Other: 1. New Zealand.

Australia. The proposed instruments focus on private employment agencies, not more generalized fee-charging employment agencies. This focus should be reflected in the title of the instruments.

Belgium. The need to proceed with an immediate revision of the Employment Service Convention, 1948 (No. 88), and its accompanying Recommendation (No. 83); the multinational aspect of the problem is not taken into account; emphasis should be placed on the role the ILO should play as a focal point for an exchange of information to benefit countries which are not well organized in the area of placement services.

Estonia. A principle of fair competition between the public employment services and private agencies should be provided.

Japan. The Convention should provide that representatives of employers and workers should be consulted prior to its application and actual regulation by legislation.

Mexico. It would be appropriate for a new instrument to include relatively recent forms of linkage such as the preparation and sale of bulletins and magazines relating to job supply and demand, employment fairs and the placement of migrant workers (outside their country of origin).

Sri Lanka. Harassment of employees; Non-provision of contracted employment/stranded employees.

Sudan. The private employment agencies should be approved by the labour-receiving countries, and specially by the enterprises requesting labour. When bilateral agreements exist between sending and receiving countries, such agreements should include provisions regulating the foreign employment agencies.

Six countries mentioned other issues which might have been dealt with in the questionnaire. This may be attributed in part to the fact that they were excluded after the discussions held at the 81st Session (1994) of the Conference; for instance, this was the case of the discussion on the possible revision of Convention No. 88. Other problems were taken into account for the drafting of the proposed text.

PROPOSED TEXTS

At its 262nd Session (March-April 1995), the Governing Body of the International Labour Office decided to place on the agenda of the 85th Session (1997) of the International Labour Conference the item concerning the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). The purpose of the proposed revision of Convention No. 96 is to give effect to the resolution and conclusions concerning the role of private employment agencies in the functioning of labour markets, adopted by the Conference at its 81st Session (1994).¹ The Committee on Private Employment Agencies at that session of the Conference held the view that the revised standard should pursue the following objectives:

- set the pattern for response to the dynamics of changing labour-market functions and recall the role of its actors;
- draw up general parameters to describe the main actors, namely, the public employment services and private employment agencies, as well as the nature of the relationship both between themselves and with their clients;
- establish general principles and provide guidance that protect: (i) labour markets against poor and unethical practices; (ii) workers' interests, including whether the stability of industrial relations systems might be affected by some practices of private employment agencies (these principles should consider the concerns of some (but not all) Committee members with regard to triangular employment relations, including contract labour, temporary work agencies and staff-leasing arrangements); (iii) workers recruited in one country for work in another;
- create environments that allow for the improved functioning of all employment agencies;
- ensure that national governments be free to determine how the above objectives should be met.

In accordance with Article 24 of Convention No 96, the ratification of a new Convention to revise this Convention in whole or in part would involve — unless the new Convention provided otherwise — the immediate denunciation of Convention No. 96, if and when the new revising Convention came into force. As from that date, Convention No. 96 would cease to be open to ratification. The same provisions are contained in Article 13 of the Fee-Charging Employment Agencies Convention, 1933

¹ ILO: *Record of proceedings*, International Labour Conference, 81st Session, Geneva, 1994, pp. 21/21-32.

(No. 34), which is in force for five Members,² and which was revised by Convention No. 96.

Since the Governing Body fixed this item of the agenda for a single discussion, the Office has prepared a draft text of the proposed instruments revising the Convention, in accordance with Article 38, paragraph 2, of the Standing Orders of the International Labour Conference. The following are the texts of (A) the proposed Convention and (B) the proposed Recommendation concerning private employment agencies. These texts have been prepared on the basis of the replies received, which are summarized and commented upon in this report. They have been drafted in the usual form and are intended to serve as a basis for discussion by the International Labour Conference of the fourth item on the agenda of its 85th Session (1997).

Some differences in drafting will be found between the proposed texts and the Office questionnaire that are not explained in the Office commentary. These differences reflect the need to bring the languages in line with each other and to be as consistent as possible with terminology used in existing instruments.

A. Proposed Convention concerning private employment agencies

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International
Labour Office, and having met in its Eighty-fifth Session on
1997, and

Noting the provisions of the Fee-Charging Employment Agencies Convention
(Revised), 1949, and

Considering the very different environment in which private employment
agencies operate, when compared to the conditions prevailing when the
above-mentioned Convention was adopted, and

Recognizing the role which private employment agencies may play in a well-
functioning labour market, and

Recalling the need to protect workers against possible abuses, and

Noting the provisions of the Employment Service Convention, 1948, and

Recalling the provisions relating to recruitment and placement in the Migration
for Employment Convention (Revised), 1949, and the Migrant Workers
(Supplementary Provisions) Convention, 1975, and

Having decided upon the adoption of certain proposals with regard to the revision
of the Fee-Charging Employment Agencies Convention (Revised), 1949,
which is the fourth item on the agenda of the session; and

Having determined that these proposals shall take the form of an international
Convention, adopts, this day of of the year one thousand nine hundred
and ninety-seven, the following Convention, which may be cited as the
Private Employment Agencies Convention, 1997:

² As Argentina ratified Convention No. 96 on 19 September 1996, Convention No. 34 will no longer be in force for this country as from 19 September 1997.

Article 1

1. For the purpose of this Convention the term "private employment agency" means any natural or legal person, independent of the public authorities, which provides as a primary activity, one or more of the following labour market services:

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
- (c) other services relating to jobseeking, such as the provision of information, that do not set out to match specific offers of and applications for employment.

2. For the purpose of this Convention, the term "workers" includes jobseekers.

3. For the purpose of this Convention, the term "processing of personal data of workers" means the collection, storage, combination, communication or any other use of information related to an identified or identifiable worker.

Article 2

1. This Convention applies to all private employment agencies.

2. This Convention applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers.

3. After consulting the most representative organizations of employers and workers concerned, the competent authority may exclude from the scope of application of the Convention:

- (a) certain categories of workers or branches of economic activity in respect of one or more of the services provided by private employment agencies as referred to in Article 1, paragraph 1;
- (b) the services referred to in Article 1, paragraph 1(c).

4. A Member which ratifies this Convention shall specify, in its first report under article 22 of the Constitution of the International Labour Organization, any exclusion of which it avails itself under paragraph 3 above, and give the reasons therefor.

Article 3

The legal status of private employment agencies shall be determined in accordance with national law and practice.

Article 4

In order to promote equality of opportunity and treatment in access to employment and to particular occupations, the Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, age, religion, political opinion, national extraction or social origin.

Article 5

The processing of personal data of workers by private employment agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers' privacy in accordance with national law and practice;
- (b) limited to matters directly relevant to the services which these agencies provide.

Article 6

1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.

2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of specified types of services provided by private employment agencies.

3. Each Member which has authorized exceptions under paragraph 2 above shall, in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organization, provide information on such exceptions and give the reasons therefor.

Article 7

The Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for migrant workers recruited or placed in its territory by private employment agencies.

Article 8

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate representative employers' and workers' organizations, exist for the investigation, if necessary, of complaints concerning the activities of private employment agencies.

Article 9

The Member shall, in accordance with national conditions and practice, allocate the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises, with regard to the following subjects:

- (a) freedom of association;
- (b) collective bargaining;
- (c) training;
- (d) working time and other working conditions;
- (e) occupational safety and health;
- (f) compensation in case of occupational accidents or disease;
- (g) safeguards in respect of the protection of workers' claims.

Article 10

1. The Member shall, in accordance with national conditions and practice and after consulting the most representative organizations of employers and workers, formulate, implement and periodically review measures to promote cooperation between the public employment service and private employment agencies.

2. The measures referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

- (a) formulating labour market policy;
- (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.

3. Private employment agencies shall, at regular intervals, supply information to the competent authority in respect of:

- (a) their location, structure and staff;
- (b) the types and volume of services provided, including the number and the distribution of placements made.

4. The competent authority shall compile and, at regular intervals, distribute the information so collected.

Article 11

1. The provisions of the proposed Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspectorate or other competent public authorities.

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of the provisions referred to in paragraph 2.

Article 12

This Convention does not affect more favourable provisions applicable to workers under other international labour Conventions.

(Final provisions.)

B. Proposed Recommendation concerning private employment agencies

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Eighty-fifth Session on 1997,
and

Having decided upon the adoption of certain proposals with regard to the revision of the Fee-Charging Employment Agencies Convention (Revised), 1949, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Private Employment Agencies Convention, 1997;
adopts, this day of of the year one thousand nine hundred and ninety-seven, the following Recommendation, which may be cited as the Private Employment Agencies Recommendation, 1997:

I. GENERAL PROVISIONS

1. The provisions of this Recommendation supplement those of the Private Employment Agencies Convention, 1997, (referred to as "the Convention") and should be applied in conjunction with them.

2. (1) Tripartite bodies or organizations of employers and workers should be involved as far as possible in the formulation and implementation of provisions to give effect to the Convention.

(2) Where appropriate, national laws and regulations applicable to private employment agencies should be supplemented by technical standards, guidelines, codes of ethics, self-regulatory mechanisms or other means consistent with national practice.

II. PROTECTION OF WORKERS

3. Members should adopt all necessary and appropriate measures to prevent and to eliminate unethical practices by private employment agencies.

4. Private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who are exercising their right to strike.

5. The competent authority should combat unfair advertising practices such as misleading advertisements for non-existent jobs.

6. Private employment agencies should be prohibited from drawing up and publishing vacancy notices or offers of employment in ways that directly or indirectly result in discrimination on grounds such as race, colour, sex, age, religion, political opinion, national extraction or social origin.

7. Private employment agencies should be prohibited from recording, in files or registers, personal data which are not required for judging the aptitude of applicants for jobs for which they are being or could be considered.

8. The competent authority should take measures to promote the utilization of adequate selection methods by private employment agencies.

9. Private employment agencies providing the services referred to in paragraph 1(b) of Article 1 of the Convention should not prevent, at the end of an assignment of an employee of the agency with a user enterprise:

- (a) the user enterprise from hiring the employee;
- (b) the employee from accepting a contract from the user enterprise.

III. RELATIONSHIP BETWEEN THE PUBLIC EMPLOYMENT SERVICE AND PRIVATE EMPLOYMENT AGENCIES

10. Cooperation between the public employment service and private employment agencies in relation to the implementation of a national policy on organizing the labour market should be encouraged; for this purpose, bodies may be established that include representatives of the public employment service and private employment agencies, as well as of the most representative organizations of employers and workers.

11. Measures to promote cooperation between the public employment service and private employment agencies could include:

- (a) pooling of information and use of common terminology so as to improve transparency of labour market functioning;
- (b) exchanging vacancy notices;
- (c) launching of joint projects, for example in training;

- (d) concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- (e) training of staff;
- (f) consulting regularly with a view to improving professional practices.

12. Private employment agencies should have properly qualified and trained staff.

13. Members should, as may be appropriate and practicable, exchange information and experiences on the contributions of private employment agencies to the functioning of the labour market and communicate this to the International Labour Office.

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